

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 Prospect Park Alliance, Inc (“Licensee”) for the operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn. The amendment, among other things, extends the License Agreement for one (1) year, with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts plus 2% of gross receipts over \$1,700,000. Operating year 16: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000; Option year: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000

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

October 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>Prospect Park Alliance, Inc.</u> Address: <u>95 Prospect Park West, Brooklyn, NY 11215</u> Telephone # (718) 965-8951 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN <u>#11-2843769</u> Not-for-Profit Organization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: <u>Amendment to License Agreement for the Operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn.</u> CONCESSION I.D.# <u>B68-IT</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*)

Address 50 Parkside Avenue, Brooklyn NY 11226
Borough Brooklyn **C.B.** 14 **Block #** 5051 **Lot #** 1

☐ **N/A** *Attach additional sheet

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 07/11/2018.
☐ Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Extension Term: One (1) year

Renewal Option(s) Term: Up to One (1) one (1)-year renewal option

Total Potential Term: Two (2) years

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

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

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

The greater of a guaranteed minimum annual fee versus a percentage of gross receipts plus 2% of gross receipts over \$1,700,000. Operating year 16: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000; Option year: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000

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 5/31/2018, which was at least 40 days in advance of the FCRC meeting on 07/11/2018 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 **XXXXXX**

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 10/10/2018.

☐ 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 License Agreement ("License Agreement") with the Prospect Park Alliance, Inc. ("PPA") for the operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn.

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

A. SELECTION PROCEDURE

☐

Sole Source

☒

Other *Describe:* Amendment to License Agreement between Parks and PPA

B. NEGOTIATIONS

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

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

PPA shall operate, maintain and manage the year-round tennis facility at the Parade Ground, Prospect Park for the use and enjoyment of the general public in accordance with the terms of the License Agreement and to the satisfaction of the Commissioner.

For operating year 16, PPA will pay Parks a minimum annual fee of \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000. At the sole discretion of Parks, the License Agreement may be renewed for an additional one year renewal. For the one year renewal, PPA will pay Parks a minimum annual fee of \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000.

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:

As the existing License Agreement neared its expiration, Parks had issued a Request for Proposals ("RFP") for a new operation in November 27, 2017. Proposals were received from multiple entities, however, an award was not made. The RFP was cancelled by Parks on May 24, 2018 due to changes that were needed to the scope of the RFP. Parks had notified all proposers and issued a new RFP on August 17, 2018.

While Parks solicits the new RFP and ultimately negotiates an agreement for a new operation, Parks does not want to see this site close to the public or experience any gap in service. Therefore, Parks would like to amend License Agreement to, among other things, allow for an extension of one (1) year, with an additional one (1)-year renewal option, to be exercised at the sole discretion of Parks. This will ensure that the facility's users can continue enjoying the recreation opportunities provided by the concession, while Parks completes the solicitation and award process.

For the reasons set forth above, Parks believes that it is in the City's best interest to amend the License Agreement for the operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn.

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 09/21/2018, 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 09/21/2018, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 09/21/2018.

☒ New York Post, a NYC citywide newspaper on 09/27/2018 and 10/04/2018.
☒ Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 09/28/2018 and 10/05/2018.
☒ Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 09/27/2018 and 10/04/2018.

2. Public Hearing Date, Exception to Public Hearing Requirement

☒ A Public Hearing was conducted on 10/09/2018.

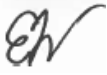
OR

☐ 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.



MEMORANDUM

TO: Hon. Eric L. Adams, President of the Borough of Brooklyn
Ms. Shawn Campbell, District Manager, Brooklyn Community Board 14

FROM: Eric Weiss, Senior Project Manager 

SUBJECT: Notice of Joint Public Hearing, October 9, 2018: Intent to amend the existing license agreement between the New York City Department of Parks and Recreation and Prospect Park Alliance, Inc. for the operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn.


DATE: September 21, 2018

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 Tuesday, October 9, 2018 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the existing license agreement between Parks and Prospect Park Alliance, Inc. ("Licensee") for the operation, maintenance and management of a year-round tennis facility at the Parade Ground, Prospect Park, Brooklyn. The amendment, among other things, extends the License Agreement for one (1) year with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts plus 2% of gross receipts over \$1,700,000. Operating year 16: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000; Option year: \$135,000 vs 10% of gross receipts plus 2% of gross receipts over \$1,700,000

A draft copy of the amended License Agreement may be reviewed or obtained at no cost, commencing on Tuesday, September 25, 2018 through Tuesday, October 9, 2018, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability. 

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

SIXTH AMENDMENT TO LICENSE AGREEMENT

BETWEEN

PROSPECT PARK ALLIANCE, INC.

AND

**CITY OF NEW YORK
PARKS & RECREATION**

FOR THE CONSTRUCTION OF A TENNIS CLUBHOUSE AND THE OPERATION,
MAINTENANCE, AND MANAGEMENT OF A YEAR-ROUND TENNIS FACILITY AT
THE PARADE GROUND, PROSPECT PARK

BROOKLYN, NEW YORK

B68-IT

DATED: _____, 2018

SIXTH AMENDMENT TO LICENSE AGREEMENT (“Sixth Amendment” or “Amendment”) made this ____ day of _____, 2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Prospect Park Alliance, Inc. (“Licensee”), a not-for-profit corporation organized under the laws of the State of New York, whose address is 95 Prospect Park West, Brooklyn, New York 11215.

WHEREAS, the parties to this Sixth Amendment are parties to that certain License Agreement dated January 15, 2003 as amended by letter dated February 13, 2004; letter dated April 13, 2014; letter dated August 24, 2004; letter dated January 10, 2006; and letter dated February 23, 2006 (the “License” or “License Agreement”); and

WHEREAS, the License Agreement currently has an expiration date of October 12, 2018 and Parks is evaluating options for the future of the tennis concession at the Parade Ground, Prospect Park; and

WHEREAS, the parties wish to extend the Term of the License Agreement to ensure that the public can continue enjoying the recreation and fitness opportunities provided by the concession while Parks works to develop plans for the concession; and

WHEREAS, the parties desire to amend the terms of the License Agreement subject to and in accordance with the terms of this Sixth 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 Sixth Amendment, all capitalized terms in this Sixth Amendment shall have the meaning ascribed to them in the License Agreement.
- 1.2** All references in the License Agreement to “Prospect Park Alliance” shall be deemed amended to read “Prospect Park Alliance, Inc.”
- 1.3** Section 3.1 of the License Agreement is amended by deleting Section 3.1 in its entirety and inserting the following new Section 3.1:

This License shall be for a term beginning October 13, 2003 (“Commencement Date”) and ending October 12, 2019 or the last day of any renewal period that is exercised (“Termination Date”). The period between the Commencement Date and the Termination Date shall be referred to as the “Term.” This License may be renewed, at the sole discretion of the Commissioner, for one (1) additional one (1) year term upon the same terms and conditions herein.

1.4 Section 4.1 of the License Agreement is amended by deleting Section 4.1 in its entirety and inserting the following new Section 4.1:

Licensee shall make the licensee fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of Gross Receipts, plus 2% of Gross Receipts over \$1,700,000, derived from the operation of the Licensed Premises (see Section 4.5 below):

OPERATING YEAR	MINIMUM ANNUAL FEE	VS % OF GROSS RECEIPTS
1	\$35,000	5%
2	\$40,000	5%
3	\$45,000	5%
4	\$50,000	5%
5	\$55,000	5%
6	\$60,000	5%
7	\$70,000	6%
8	\$80,000	7%
9	\$90,000	8%

10	\$100,000	9%
11	\$110,000	10%
12	\$120,000	10%
13	\$125,000	10%
14	\$130,000	10%
15	\$135,000	10%
16	\$135,000	10%
17 (if renewed by the City)	\$135,000	10%

1.5 Section 4.2 of the License Agreement is amended by deleting Section 4.2 in its entirety and inserting the following new Section 4.2:

The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal installments, in the amounts set forth in the schedule of Minimum Annual Fee Payments, annexed hereto as Exhibit D and Exhibit D1 as applicable. Any additional amount resulting from the applicable percentage fee shall become due and payable thirty (30) days after the end of each Indoor Tennis Season, except that for the final Operating Year the applicable percentage fee shall become due and payable within (30) days after the Termination Date of the License Agreement. The percentage fee shall be calculated on the Gross Receipts of the Indoor Tennis Season plus the preceding Outdoor Tennis Season except that the percentage fee for the final Operating Year shall be calculated on the Gross Receipts of the Indoor Tennis Season and both the preceding and subsequent Outdoor Tennis Seasons.

1.6 Article 5 of the License Agreement is amended by inserting the following Section 5.3:

5.3 Notwithstanding anything in this License Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions

of the New York City Charter shall not be diminished, compromised, or abridged in any way.

1.7 Section 9.9 of the License Agreement is amended by deleting the last sentence in Section 9.9 in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees for Operating Year 16.

1.8 Section 9.18 of the License Agreement is amended by deleting Section 9.18 in its entirety and inserting the following new Section 9.18:

9.18 License must provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall comply with all City, State, and Federal laws relating to access for persons with disabilities. The Licensee shall also comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all of Licensee’s advertising. Licensee shall include in its advertising and promotion program, described in Section 9.24 below, a plan, which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and usable by individuals with disabilities.

1.9 Section 9.27 of the License Agreement is amended by deleting Section 9.27 in its entirety and inserting the following new Section 9.27:

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

1.10 Section 9.33 of the License Agreement is amended by deleting Section 9.33 in its entirety and inserting the following new Section 9.33:

9.33 Alcoholic beverages may be sold and/or served by Licensee to complement the food service at the Licensed Premises, provided that Licensee obtains, at its sole expense, the appropriate permits(s) and/or license(s) applicable to the sale or service of alcoholic beverages from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served in the immediate vicinity of the Licensed Premises and/or in a cordoned-off area if exterior seating is proposed and must be consumed on the Licensed Premises within designated areas. All efforts must be made by Licensee to keep alcohol consumption discreet.

1.11 Article 9 of the License Agreement is amended by inserting the following Section 9.34:

9.34 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.

1.12 Article 9 of the License Agreement is amended by inserting the following Section 9.35:

9.35 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**.

1.13 Article 9 of the License Agreement is amended by inserting the following Section 9.36:

9.36 In the event that Licensee places vending machines at the Licensed Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines (together, "Citywide Food and Beverage Standards"), attached hereto as **Exhibit G**. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, Licensee acknowledges that the Citywide Food and Beverage Standards may be changed during the Term of this License. In the event that Licensee installs vending machines on the Licensed Premises, the Licensee will be required to comply with any new and/or changed Citywide Food and Beverage Standards in the operation of all vending machines at the Licensed Premises. If Licensee fails to comply with any new and/or changed Citywide Food and Beverage

Standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises.

1.14 Article 10 of the License Agreement is amended by inserting the following Section 10.23:

10.23 To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other 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.

1.15 Article 23 of the License Agreement is hereby amended by deleting Article 23 in its entirety and inserting the following new Article 23:

23.1 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 operations under this License.

C. 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.

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.

23.2 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. 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.

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

24.1 Licensee's Obligation to Insure

A. From the date this Sixth Amendment to License Agreement is executed through the date of expiration or termination of the License Agreement, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits or other types of insurance if, in the reasonable opinion of Commissioner, Licensee's operations warrant it.

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

24.2 Commercial General Liability Insurance

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). Licensee shall maintain coverage for products completed operations in the amount of Two Million Dollars (\$2,000,000). 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 editions of ISO Forms CG 20 26 and CG 20 37. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

24.3 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.

24.4 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.

24.5 Property Insurance

A. The Licensee shall maintain commercial property insurance written on a special causes of loss form (such as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather

than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

B. This Section does not require coverage for damage caused by flooding.

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

D. 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.

24.6 Contractors Pollution Liability Insurance

A. In the event the Licensee enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs, or any other hazardous materials or substances, the Licensee shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, cleanup costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor’s operations at the Premises.

B. If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000), and provide coverage for the Licensee as Named

Insured or Additional Insured and the City, together with its officials and employees, as Additional Insureds. Coverage for the City shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

C. Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products (other than to operate vehicles in connection with Licensee's use of the Licensed Premises), asbestos, lead, pcb's or any other hazardous materials.

24.6 Liquor Law Liability Insurance

In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and name the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

24.7 General Requirements for Insurance Coverage and Policies

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

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

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

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

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

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

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

24.8 Proof of Insurance

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

B. For Workers' Compensation, Employers Liability Insurance and 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 coverage.

C. For all insurance required under this Article other than Workers' Compensation, Employers 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. Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

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

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

24.9 Miscellaneous

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 24.2, 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 or self-insured retentions to which they are subject, whether or not the City is an insured under the policy.

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

Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

I. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of 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 Article.

1.17 Section 28.1 of the License Agreement is hereby amended by deleting Section 28.1 in its entirety and inserting the following new Section 28.1:

(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 eighteen (18) months of the termination or conclusion of this License, or within eighteen (18) 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.

1.18 The License Agreement is amended by inserting **Exhibit D1**, attached to this Sixth Amendment, after **Exhibit D** of the License Agreement.

1.19 The License Agreement is amended by deleting **Exhibit B** in its entirety and replacing it with **Exhibit B1**, attached to this Sixth Amendment. Additionally, all references in the License Agreement to “Exhibit B” shall be deemed amended to read “Exhibit B1”.

1.20 Except as amended by this Sixth Amendment, the License Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Sixth Amendment and

the License Agreement, the terms of this Sixth Amendment shall govern and prevail in all instances.

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

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

CITY OF NEW YORK
PARKS & RECREATION

PROSPECT PARK ALLIANCE, INC.

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 _____, 2018 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 _____, 2018 before me personally came _____ to me known, and known to be the _____ of Prospect Park Alliance, Inc., and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

EXHIBIT B1

INDOOR
Courts

2018-19

MON- FRI	Fri Night	reg	seniors
6am			
7am		40	
8am		44	
9am		52	NA
10am		52	NA
11am		52	NA
12am		46	40
1pm		42	40
2pm		42	40
3pm		42	40
4pm	66	66	
5pm	66	66	
6pm	66	66	
7pm	72	78	
8pm	52	78	
9pm	52	78	
10pm	40	40	
11pm			
WEEKEND			
7am		54	
8am		72	
9am		86	
10am		86	
11am		86	
12am		80	
1pm		80	
2pm		80	
3pm		80	
4pm		64	
5pm		64	
6pm		64	
7pm		50	
8pm		50	
9pm		44	
10pm		40	
11pm			

Approved by Parks

WINTER / INDOORS JD

2018-2019

1 hr	\$ 44.00
1.5 hr.	\$ 66.00
2 hr.	\$ 88.00
PW	\$ 30.00

SUMMER YOUTH PROGRAM

1/2 Day Morning	\$ 90.00
1/2 Day Afternoon	\$ 80.00
FULL DAY	\$ 110.00

FALL JD (Outdoor)

1 hr	\$ 35.00
1.5 hr.	\$ 52.50
2 hr.	\$ 65.00
PW	\$ 25.00

ADVANCED SUMMER JD 2HR

\$ 30.00

Special Aces

Indoor 1 hr.	\$ 15.00
Summer 2 hrs.	\$ 25.00
Summer 1 hr.	\$ 15.00

June JD Afterschool

1 hr Class	\$ 35.00
2 hr Class	\$ 65.00

<u>WINTER /</u> <u>INDOORS Lesson</u>	2018-2019
Head	95,100,105,110,115,120
Staff	90,95,100,105,110,115
Seasonal	
Head pro pay rate	51.5
Staff Pro rate	32-43
<u>SUMMER /</u> <u>OUTDOORS</u> <u>Lesson</u>	2017-2018
Head	85,90,95
Staff	80,85,90
Head pro pay rate	51.5
SYP Pro Rate	29-45
<u>WINTER /</u> <u>INDOORS AGC</u>	2017-2018
Series	50
single	65
Head pro pay rate	51.5
<u>SUMMER /</u> <u>OUTDOORS AGC</u>	2017-2018
Series(1.5hrs)	50
single(1.5 hrs)	65
Head pro pay rate	51.5
<u>BEGINNER</u> <u>CLASSES</u>	30

Merchandise Prices 2018	
Description	Price
Headbands	\$4.00
I LOVE PP TEES	\$15.00
Tee - PLAY BALL""	\$15.00
Tennis Socks	\$8.00
SPECIAL ACES TEES	\$15.00
Tee - KITE""	\$15.00
Red Wilson Visors	\$20.00
Willson Solar or Tour CAP or Elipse - White	\$20.00
Wristbands	\$6.00
Kid's Balls (yellow & red)	\$4.60
Wilson - Tennis Balls	\$5.51
Starter Tennis Balls	\$13.78
Demo Racquets Rental	\$4.59
Overgrips	\$6.43
Replacement Grips	\$15.61
Shock Absorbers	\$1.84
SHOCK ABSORBERS EMOTIONS	\$2.76
Babalot RPM Blast 16/17	\$45.92
Babalot VsGUT String/Vs Touch	\$68.89
Babalot XCEL String	\$44.09
GAMMA TNT 16/17	\$35.82
LUXILON Big Banger	\$44.09
STRING OWN	\$21.13
PRINCE DURAFLEX Synthetic Gut	\$30.31
PRINCE ORIGINAL Synthetic Gut 16/17	\$30.31
PRINCE PRO BLEND	\$42.25
WILSON NXT 16/17	\$42.25
WILSON SENSATION 16/17	\$35.82
WILSON Synthetic Gut Extreme	\$30.31
WILSON STAMINA	\$30.31
Tennis Racquet - (K) OBRA TOUR 90	\$196.56
Tennis Racquet - (K) PRO OPEN 100	\$179.10
Tennis Racquet - (K) SIX-ONE TOUR 90	\$198.39
Tennis Racquet - (K) TOUR 95	\$179.10
Tennis Racquet - BLADE 104	\$199.32
Tennis Racquet - BLADE 98	\$197.48
Tennis Racquet - BLADE TEAM BLX 100 - DEMO	\$73.48
Tennis Racquet - BLUSH 21/19	\$22.97
Tennis Racquet-JUICE 100 BLX2 FRM3	\$202.07
Tennis Racquet-JUICE 100 BLX2	\$202.07

FRM3	
Tennis Racquet - JUICE 100BLX 2 FRM4	\$202.07
Tennis Racquet-JUICE 100L TNS FRM W/O CVR 2	\$202.07
Tennis Racquet - JUICE 100S TNS (no cover 3)	\$199.31
Tennis Racquet - JUICE 100S- DEMO	\$188.30
Tennis Racquet - JUICE 108-DEMO	\$73.48
Tennis Racquet-PLUS BLX 100S SPIN(BL/YL/Wh)-DEMO	\$73.48
Tennis Racquet - PRO STAFF 95S TNS FRM	\$201.20
Tennis Racquet - PRO STAFF 100L- DEMO	\$73.48
Tennis Racquet - SIX-ONE 95 - DEMO	\$80.00
Tennis Racquet - SpongeBob SquarePants 21/19	\$18.37
Tennis Racquets - STEAM 105S	\$189.21
Tennis Racquet - STEAM 99S SPIN- DEMO	\$73.48

EXHIBIT D1

ADDENDUM TO SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS

<u>DUE DATE</u>	<u>MINIMUM FEE</u>
11/01/18	\$11,250.00
12/01/18	\$11,250.00
1/01/19	\$11,250.00
2/01/19	\$11,250.00
3/01/19	\$11,250.00
4/01/19	\$11,250.00
5/01/19	\$11,250.00
6/01/19	\$11,250.00
7/01/19	\$11,250.00
8/01/19	\$11,250.00
9/01/19	\$11,250.00
10/01/19	\$11,250.00
YEAR 16	\$135,000.00

<u>DUE DATE</u>	<u>MINIMUM FEE</u>
11/01/19	\$11,250.00
12/01/19	\$11,250.00
1/01/20	\$11,250.00
2/01/20	\$11,250.00
3/01/20	\$11,250.00
4/01/20	\$11,250.00
5/01/20	\$11,250.00
6/01/20	\$11,250.00
7/01/20	\$11,250.00
8/01/20	\$11,250.00
9/01/20	\$11,250.00
10/01/20	\$11,250.00
YEAR 17 (if renewed by the City)	\$135,000.00

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:

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.

Applicability, Accrual, and Use

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 PSL (“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 PSL 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 PSL. 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 PSL 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 _____

EXHIBIT G

Citywide Beverage Vending Machines Standards

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) Specifications regarding the product mix:

- 1) No more than two columns (or "buttons") may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).
- 2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or "buttons"). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
- 3) The remaining products must be ≤ 25 calories per 8 oz.

B) Specifications regarding product display placement:

- 1) Water must be placed in the position with the highest selling potential.
- 2) "High Calorie" beverages (defined as any beverage > 25 calories per 8 oz) must be placed in the position with the lowest selling potential.
- 3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.
- 4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) Specifications regarding size:

- 1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.
- 2) All water and seltzer selections must be at least 12 oz.
- 3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

D) Calorie labeling:

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information. (adapted from HC §81.50)

E) Promotional space:

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8oz) and/or healthy activities.

F) Price:

- 1) Pricing models that encourage healthy choices (e.g. by establishing lower prices for healthy beverage choices (≤ 25 calories per 8 oz) relative to "High Calorie" beverages (> 25 calories per 8 oz)) are encouraged.

For Vending Locations Regularly Used by Children age 18 and under

A) Specifications regarding the product mix:

- 1) Beverage vending machines can only include:
 - Water
Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
 - Unsweetened milk, 1% or nonfat only
 - Beverages with ≤ 25 calories per 8 oz
 - Carbonation and caffeine are allowed
- 2) Prohibited:
 - Artificial sweeteners
 - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
 - Artificial flavors and colors
- 3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:
 - Should not be caffeinated
 - Should be ≤ 10 calories per 8 oz

B) Calorie labeling:

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.

(adapted from HC §81.50)

C) Promotional space:

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8 oz) and/or healthy activities.

Note that New York City beverage vending standards may be revised or updated in the future. Vendors would have time to come into compliance with any changes.

New York City Food Standards

Part III: Standards for Food Vending Machines

The Standards for Food Vending Machines were enacted December of 2011, pursuant to Executive Order 122. These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines. Follow these standards to make vending machine choices healthier for employees and visitors.

Snack Standards

Snacking in excess can lead to weight gain. Snacks, when consumed, should add healthy nutrients to the overall diet and help curb hunger.

- 1) Require that snacks meet all of the following criteria, per package:
 - Calories: no more than 200 calories
 - Total fat: no more than 7 grams
 - Nuts, seeds, nut butters and cheese are exempt
 - Combination products of dried fruit and nuts are exempt
 - Saturated fat: no more than 2 grams
 - Nuts, seeds, nut butters and cheese are exempt
 - Trans fat: 0 grams trans fat
 - Sodium: no more than 200 mg
 - Cottage cheese: no more than 400 mg
 - Sugar: no more than 10 grams
 - Fruit and vegetable products with no added sugar are exempt
 - Yogurt: no more than 30 grams sugar per 8 ounces
 - Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)
- 2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.
- 3) Require that calorie information is posted for each food item, as packaged.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Health and Mental Hygiene (“DOHMH”) 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 concession agreement with OptumRx Discount Card Services LLC to develop, operate and administer the NYC Drug Discount Card program available to all New York City residents, known as the Big Apple RX. DOHMH anticipates that the amendment will extend the term of the concession agreement for an additional eighteen (18) months.

BE IT FURTHERED RESOLVED, that DOHMH shall submit the amendment to the concession agreement it proposes to enter into with OptumRx Discount Card Services LLC to the FCRC for approval.

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

October 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: Department of Health and Mental Hygiene (DOHMH)	CONCESSION TITLE/DESCRIPTION: <u>To develop, operate and administer the NYC Prescription Drug Discount Card Program</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # <u>19HO011401R0X00</u>
SELECTION PROCEDURE (* City Chief Procurement Officer approval of CPSR required)	
<input type="checkbox"/> Competitive Sealed Bids (CSB) <input type="checkbox"/> Competitive Sealed Proposals (CSP)*	
<input checked="" type="checkbox"/> Different Procedure * (<input type="checkbox"/> Sole Source Agreement <input checked="" type="checkbox"/> Other <u>Intent to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC. to develop, operate and administer the NYC Drug Discount Card Program available to all NYC residents.</u>	
<input type="checkbox"/> Negotiated Concession*	
Recommended Concessionaire <u>OptumRx Discount Card Services, LLC.</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>31-1728846</u> Attach Memo(s) *	
CONCESSION AGREEMENT TERM Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply) <input type="checkbox"/> Additional description attached <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____ % <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____ % of Gross Receipts <input checked="" type="checkbox"/> Other formula <u>To be negotiated</u>
LOCATION OF CONCESSION SITE(S)* <input checked="" type="checkbox"/> N/A Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ <small>*Attach additional sheet</small>	
CONCESSION TYPE (Check all that apply)	
> Significant Concession: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Basis: <input type="checkbox"/> Total potential term =>10 years <input checked="" type="checkbox"/> Projected annual income/value to City >\$100,000 <input type="checkbox"/> Major Concession	
> Major Concession: <input checked="" type="checkbox"/> NO <input type="checkbox"/> 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. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If YES, check the applicable box(es) below: <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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: <input checked="" type="checkbox"/> 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 Judi Rich Soehren Title ACCO & Assistant Commissioner
Signature [Signature] Date 9/21/18

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 [Signature] Date 9/28/18
City Chief Procurement Officer

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)

For the reasons stated below, the New York City Department of Health and Mental Hygiene ("DOHMH") seeks Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules ("different procedure"), to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, for the development, operation and administration of the NYC Drug Discount Card Program available to all NYC residents.

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.*

When/if the FCRC approves the use of a different procedure to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC, DOHMH anticipates that this amendment will extend the NYC Drug Discount Card Program for an additional eighteen (18) months.

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

Pursuant to a competitive RFP process, DOHMH entered into a concession agreement, effective February 17, 2011, with Catamaran Discount Card Services, LLC (formally known as HealthTran, LLC dba HealthTrans), now known as OptumRx Discount Card Services, LLC ("OptumRx"), to develop, operate and administer the NYC Drug Discount Card Program to be made available to all NYC residents, known as the BigAppleRX. This agreement was amended previously to extend the term to August 16, 2018. DOHMH anticipated releasing a Request for Proposal and selecting a new Concessionaire on or before August 2018. However, because of unforeseen delays in the development of the RFP due to changes in the scope of services, DOHMH now anticipates that a new Concessionaire will be in place by February 2020.

While DOHMH develops the RFP and completes the competitive solicitation process, there is a continued need to ensure that NYC residents have access to pharmaceutical drugs at discount prices. Currently, over 800,000 IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by OptumRx (also referred to as "BigAppleRX provider"). Those IDNYC cards will remain in effect until 5 years after their effective date. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. In addition, the Mayor's Office of Immigrant Affairs has launched the ActionHealthNYC program ("Program"), which will provide uninsured low-income immigrant New Yorkers with better

access to health care services. Participants in the Program will either have an IDNYC card or will be issued one, and the prescription drug benefit of BigAppleRX will be a key feature of the health care access provided under the Program. The Program will continue during the period of the proposed eighteen (18) month extension. Maintaining the current BigAppleRX provider in place will make those benefits available to Participants in the Program without administrative interruption and will give DOHMH time to select a new concessionaire. Therefore, DOHMH believes that the City will be best served by negotiating an amendment to the concession agreement with OptumRx to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new competitive request for proposal process to select a new concessionaire.

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

In order to sustain uninterrupted services for the NYC Drug Discount Card Program (Step 1). DOHMH intends to seek FCRC authorization to negotiate an amendment to the concession agreement with OptumRx to extend the agreement for an additional eighteen (18) months, as the existing agreement expired on August 16, 2018. Pending FCRC Step 1 approval, DOHMH intends to negotiate the terms of an extension with OptumRx.

Once negotiated and if determined by DOHMH to be a significant concession, DOHMH and the FCRC will hold a joint Public Hearing on the proposed amendment to the concession agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If DOHMH determines that the amendment to the concession to be non-significant, the agency will present the full negotiated amendment to the concession agreement with OptumRx to the FCRC and request the required FCRC authorization to enter into the amendment directly (without the need for an initial 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 each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. [Explain] ☒ N/A



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE
Mary T. Bassett, MD, MPH
Commissioner

MEMORANDUM

TO: All Borough Presidents
All Community Boards

FROM: Cynthia Mont-Burbon, Director of Contracts
Division of Prevention and Primary Care 

SUBJECT: Franchise and Concession Review Committee approval of a different procedure to negotiate an amendment to the concession agreement between the City of New York acting by and through the Department of Health and Mental Hygiene and OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

DATE: August 29, 2018

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify all Borough Presidents and Community Boards that the New York City Department of Health and Mental Hygiene (DOHMH) is seeking Franchise and Concession Review Committee approval to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

This amendment to the concession agreement will extend the agreement for an additional eighteen (18) months in order to ensure continuous operation of the NYC Drug Discount Card program for such period while the DOHMH selects a new concessionaire through a request for proposal process.

The 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 contact Cynthia Mont-Burbon by telephone at (347) 396-4242 or via e-mail at cmontbur@health.nyc.gov.

Thank you.

CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

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 Riverside Park Conservancy regarding Riverside Park in Manhattan.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with the Riverside Park Conservancy 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

October 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: Sole Source License Agreement with the Riverside Park Conservancy regarding Riverside Park in Manhattan.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M71-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: Riverside Park Conservancy ☒ EIN ☐ SSN # 13-3443825
 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 (Check all that apply)</p> <p><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>
<p>LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A</p> <p><u>Address:</u> Riverside Drive to Hudson River <u>Borough:</u> Manhattan C.B. 7, 9, 12 <u>Block # 1187 Lot # 1</u> <u>Block # 1254 Lot # 1</u> <u>Block # 1897 Lot # 1</u> *Attach additional sheet</p>	

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 9/28/2018

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 9/28/2018

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 ("NYC Parks") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules of the City of New York ("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 ("Agreement") with the Riverside Park Conservancy ("RPC") regarding Riverside Park in Manhattan.

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

The Riverside Park Conservancy ("RPC") is a not-for-profit organization formed in 1986 to provide maintenance, programming, and fundraising to support NYC Parks' care of Riverside Park in Manhattan. Throughout its history, RPC has expanded its purview beyond Riverside Park, providing additional maintenance, programming and fundraising services at Riverside Park South, Sakura Park, West Harlem Piers Park, Fort Washington Park from 155th Street to 181st Street, and the Little Red Lighthouse.

Pursuant to a Maintenance and Operations Agreement to be executed in conjunction and co-terminus with this Agreement, RPC will be responsible for certain maintenance and operation activities at the tennis courts located near 96th Street, 119th Street, and 173rd Street (the "Courts".) RPC will also perform general maintenance at the Peter Jay Sharp Volunteer House, the 102nd Street Field House, and the Hippo Playroom and surrounding landscape in Riverside Park. The exact terms of RPC's maintenance and operational responsibilities are currently under negotiation and will be finalized prior to the execution of this Agreement (collectively the "Licensed Premises").

To support RPC's maintenance and operation of the Licensed Premises, it is anticipated that this Agreement will (i) allow RPC to generate revenue at the Courts; including through the sale of single-play tennis passes at the Courts, the level of which to be agreed upon by NYC Parks and RPC; and (ii) will further allow RPC to offset the cost of its maintenance responsibilities at the Licensed Premises, by allowing RPC to generate revenue through rentals for private events by third parties at the Peter Jay Sharp Volunteer House, 102nd Street Field House, and Hippo Playroom. Parks and RPC will negotiate the schedule of such activities to ensure they do not unduly interfere with the public's use of the spaces.

It is further anticipated that additional revenue generating options may be utilized, with NYC Parks' approval, in order to support RPC's maintenance and operation of the Licensed Premises. Any sublicense agreement(s) will be subject to NYC Parks' approval.

It is anticipated that pursuant to a sole source license agreement, RPC will use all concession revenue generated at the Licensed Premises to solely maintain and operate the Licensed Premises.

Given RPC's commitment to maintaining the Licensed Premises, NYC Parks believes that it is in the best interest of the City to negotiate an Agreement with RPC, rather than proceed with a competitive solicitation process.

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

NYC 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 RPC, which will go before the FCRC on October 10, 2018 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, NYC 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 NYC Parks determines the concession to be non-significant, NYC Parks will present the fully negotiated Agreement with RPC 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

Alyssa Cobb Konon
Deputy Commissioner
Planning and Development

T 212.360.3402

E alyssa.cobb@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
Penny Ryan, District Manager, Manhattan Community Board #7
Eutha Prince, District Manager, Manhattan Community Board #9
Ebenezer Smith, District Manager, Manhattan Community Board #12

FROM: Philip 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 Riverside Park Conservancy Regarding Riverside Park in Manhattan.

DATE: August 31, 2018

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 Boards 7, 9 and 12, that the New York City Department of Parks & Recreation ("NYC Parks") is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement ("Agreement") with the Riverside Park Conservancy ("RPC") regarding Riverside Park in Manhattan.

The Agreement is anticipated to allow RPC to engage in revenue-generating activities, including the sale of single-play tennis passes at the courts near 96th Street, 119th Street, and 173rd Street (the "Courts"). The Agreement is also anticipated to (i) provide for revenue generating activities at the Courts, the specifics to be agreed upon by NYC Parks and RPC; and (ii) provide for additional revenue-generating activities including event rentals by third parties at the Peter Jay Sharp Volunteer House, 102nd Street Field House, and Hippo Playroom, as well as other potential concessions in Riverside Park, as approved by NYC Parks.

This concession has been determined not to be a major concession as defined in Chapter 7 of the City Planning Commission Rules.

If you have any questions or comments, please feel free to contact Philip Abramson, NYC Parks Director of Revenue Communications, by phone at (212) 360-3426 or via email at philip.abramson@parks.nyc.gov.

Thank you.