

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

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 City Parks Foundation for the naming rights of the SummerStage festival, primarily based in Central Park, Manhattan.

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with City Parks Foundation 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**

November 14, 2018

Date: _____

Signed: _____

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



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
Mr. Wally Rubin, District Manager, Manhattan Community Board 5
Ms. Penny Ryan, District Manager, Manhattan Community Board 7
Mr. Will Brightbill, District Manager, Manhattan Community Board 8
Mr. Andrew Lassalle, District Manager, Manhattan Community Board 10
Mr. Angel Mescain, District Manager, Manhattan Community Board 11

FROM: Alexander Han, Director of Concessions 

SUBJECT: Notice of Intent to Seek FCRC Authorization to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with City Parks Foundation for the Naming Rights of the SummerStage festival, primarily based in Central Park, Manhattan

DATE: October 5, 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 5, 7, 8, 10 and 11, that the New York City Department of Parks & Recreation ("NYC Parks") is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with City Parks Foundation for the naming rights of the SummerStage festival, primarily based in Central Park, Manhattan.

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

If you have any questions or comments, please feel free to contact Phil Abramson, Director of Revenue Communications, at 212-360-3426 or via email at phil.abramson@parks.nyc.gov.

Thank you.

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 City Parks Foundation for the Naming Rights of the SummerStage festival, primarily based in Central Park, Manhattan.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M10-71-O
SELECTION PROCEDURE (* City Chief Procurement Officer approval of CPSR required)	
<div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Competitive Sealed Bids (CSB)</div><div><input type="checkbox"/> Competitive Sealed Proposals (CSP)*</div></div> <div style="display: flex; justify-content: space-between;"><div><input checked="" type="checkbox"/> Different Procedure * (<input checked="" type="checkbox"/> Sole Source Agreement <input type="checkbox"/> Other _____)</div><div></div></div> <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Negotiated Concession*</div><div></div></div>	
Recommended Concessionaire: City Parks Foundation <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 13-3561657 Attach Memo(s) *	
CONCESSION AGREEMENT TERM Initial Term: To be negotiated Renewal Option(s) Term: To be negotiated Total Potential Term: To be negotiated	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 To be negotiated
LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A Address <u>Rumsey Playfield Central Park</u> Borough <u>Manhattan</u> C.B. <u>5, 7, 8, 10, 11</u> Block # <u>111</u> Lot # <u>1</u> *Attach additional sheet	
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: <div style="margin-left: 20px;"><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.</div>	
If NO, check the applicable box below: <div style="margin-left: 20px;"><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. <input type="checkbox"/> 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.</div>	

- ☐ 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 10/31/2018

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 11/1/18

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

The New York City Department of Parks and Recreation (Parks) will be pursuing a Sole Source License Agreement (Agreement) pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) 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 City Parks Foundation (CPF) for the naming rights of the SummerStage festival, primarily based in Central Park, Manhattan.

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

CPF is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which debuted in 1986. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings more than 100 free performances to parks throughout the five boroughs reaching more than 280,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and theater, the festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

In 2009, Parks entered into a Maintenance and Operation Agreement with CPF for the operation of SummerStage at Rumsey Playfield in Central Park. This agreement was renewed in June 2018. The total cost of the free events, maintenance and operation of the Site, and administrative expenses directly related to SummerStage festival, primarily based in Central Park, is approximately \$6.5 million annually. In 2016, CPF entered into a Concession Agreement with Parks for the operation and maintenance of a

food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park. The revenue generated from the sale of food, beverages, and merchandise at SummerStage through this concession helps CPF offset the high costs of maintenance and operations of the Site, programming events in Central Park and in parks throughout the five boroughs, most of which are offered free of charge, as well as the administrative expenses associated with this very popular series. However, the revenue that is generated from these concessions do not cover all of the operational costs.

CPF is interested in entering into an Agreement with Parks for the naming rights of the SummerStage festival to help further offset their expenses at SummerStage, in accordance with Parks' guidelines and as approved by Parks. Any revenues in excess of the amount attributable to covering the cost of the free events, for maintenance and operation of the Site, and administrative expenses directly related to SummerStage will be strictly used for additional free public programming at the Site.

Given CPF's commitment to providing New Yorkers with world-class entertainment experiences at SummerStage and given CPF's Maintenance and Operation Agreement for the operation of SummerStage, Parks believes that it is in the best interest of the City to negotiate an Agreement with CPF, rather than proceed with a competitive solicitation process.

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

Parks is requesting FCRC authorization to utilize different procedures, pursuant to Section 1-16 of the Concession Rules, to negotiate a License Agreement with CPF, which will go before the FCRC on November 14, 2018 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed License Agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If Parks determines the concession to be non-significant, the agency will present the fully negotiated License Agreement with CPF to the FCRC and request the required FCRC authorization to enter into the License Agreement 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. ☒ **N/A**

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Calendar No. 2)

BE IT RESOLVED that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a Sole Source License Agreement (“Agreement”) with the Fashion Center District Management Association, Inc., doing business as the Garment District Alliance (“GDA”), to provide for the operation, management, and maintenance of a pedestrian plaza located at Broadway between West 36th Street and West 41st Street in Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or GDA, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by GDA in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The Agreement provides for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT. GDA will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

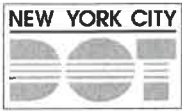
**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

November 14, 2018

Date: _____

Signed: _____

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



Department of Transportation

POLLY TROTTEMBERG, Commissioner

October 24, 2018

The Honorable Gale Brewer
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Mr. Wally Rubin, District Manager
Community Board 5
450 7th Avenue, Rm. 2109
New York, NY 10123

Re: Pedestrian Plaza Concession Notice of Public Hearing

Dear Borough President Brewer and District Manager Rubin,

Pursuant to Section 1-13(q) of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") is providing your office a copy of the Notice of Joint Public Hearing between DOT and the Franchise and Concessions Review Committee ("FCRC") for our intent to award as a concession a Sole Source License Agreement with Fashion Center District Management Association, Inc., doing business as the Garment District Alliance ("GDA"), (the "Concessionaire") for the operation, management, and maintenance of a pedestrian plaza located at Broadway between West 36th Street and West 41st Street in the borough of Manhattan.

Enclosed is a full copy of the Public Notice for your records.

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in blue ink, appearing to read "E. Pincar Jr.", written over a faint blue circular stamp.

Edward F. Pincar Jr.
Manhattan Borough Commissioner


PUBLIC NOTICE

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held on November 13, 2018, at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“Agreement”) to the Fashion Center District Management Association, Inc., doing business as the Garment District Alliance (“GDA”), whose address is 209 West 38th Street, 2nd Floor, New York, NY 10018, to provide for the operation, management, and maintenance of a pedestrian plaza located at Broadway between West 36th Street and West 41st Street, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or GDA, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by GDA in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. GDA will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The Agreement will provide for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT.

A draft copy of the Agreement may be reviewed or obtained at no cost, commencing October 26, 2018 through November 13, 2018, between the hours of 10am and 4pm, excluding weekends and holidays at the NYC Department of Transportation, located at the NYC Department of Transportation, Office of Cityscape & Franchises, 55 Water Street, 9th Floor, NY, NY 10041.

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

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>NYC Department of Transportation (DOT)</u>	RECOMMENDED CONCESSIONAIRE Name: <u>Fashion Center District Management Association, Inc.,</u> <u>doing business as the Garment District Alliance ("GDA")</u>	CONCESSION TITLE/ DESCRIPTION: <u>Concession to operate, manage and maintain a pedestrian plaza, including through DOT approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or GDA, and other similar merchandise.</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	Address: <u>209 West 38th Street, 2nd Floor, New York, NY 10018</u> Telephone # <u>212-764-9600</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3718607</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 I.D.# <u>2018Con6</u>

LOCATION OF CONCESSION SITE(S*) Address: The pedestrian plaza is located at Broadway between West 36th Street and West 41st Street in the Borough of Manhattan ("Licensed Plaza") ☐ **N/A**

*Attach additional sheet

Borough: Manhattan **C.B.:** 5 **Block #** N/A **Lot #** N/A

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)
- > FCRC approved different selection procedure on 07/11/2018.
- ☐ Negotiated Acquisition*

CONCESSION AGREEMENT TERM

Initial Term: From Notice to Proceed (NTP) **To** Six (6) months from NTP

Renewal Option(s) Term: Up to three (3) five-year renewal options, exercisable at the sole discretion of DOT

Total Potential Term: 15 Years, 6 months

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

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ **Annual Fee(s)** \$

☐ **% Gross Receipts** %

☐ **The Greater of Annual Minimum Fee(s of \$ v. % of Gross Receipts**

☒ **Other:** GDA will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plazas.

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 the 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 05/30/2018, 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 __

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 07/11/2018.
- ☐ 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 _____ Title _____

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 Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into a Sole Source License Agreement ("Agreement") with the Fashion Center District Management Association, Inc., doing business as the Garment District Alliance ("GDA").

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

A. SELECTION PROCEDURE

☒ Sole Source

☐ Other *Describe:*

B. NEGOTIATIONS

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

The Agreement would permit GDA to operate, manage and maintain the pedestrian plaza located at Broadway between West 36th St and West 41st Street in the Borough of Manhattan (the "Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or GDA , and other similar merchandise within the Licensed Plaza. The Agreement provides for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT. GDA will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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:

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

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 10/26/2018, 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 10/25/2018 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 twice in two 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 10/25/2018.

☒ New York Post, a NYC local newspaper published in the affected borough(s) on 10/25/2018 and 10/26/2018.

☒ Metro, a NYC local newspaper published in the affected borough(s) on 10/25/2018 and 10/26/2018.

2. Public Hearing Date, Exception to Public Hearing Requirement

☒ A Public Hearing was conducted on 11/13/2018.

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.

THIS LICENSE, made as of the ____ day of _____, 2018 between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and the Fashion Center District Management Association, Inc., doing business as the Garment District Alliance ("GDA"), a New York not-for-profit corporation.

WITNESSETH

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

WHEREAS, GDA was formed in 1993 to improve and enhance the Garment District in the borough of Manhattan, City and State of New York, including but not limited to the improvement and maintenance of public space therein; and

WHEREAS, DOT has jurisdiction over a pedestrian plaza located on Broadway between West 41st and 36th Streets, New York, New York ("Licensed Plaza"). The Licensed Plaza shall consist of five separate areas as illustrated in **Exhibit A**; and

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

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

WHEREAS, GDA and DOT desire to work cooperatively to operate, manage and maintain the Licensed Plaza; and

WHEREAS, GDA has experience performing maintenance activities in the Garment District; and

WHEREAS, GDA has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Garment District; and

WHEREAS, GDA is willing to perform responsibilities associated with the maintenance and/or repair of the Licensed Plaza for the benefit of the public; and

WHEREAS, DOT recognizes that by providing the maintenance and/or repair of the Licensed Plaza, GDA will be significantly assisting DOT's plaza program.

WHEREAS, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a Sole Source License Agreement with GDA, to provide for the operation, management and maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcession(s), including but not limited to providing for the sale of any of

the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or GDA, and other similar merchandise (“Subconcession(s)”) within the Licensed Plaza;

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

1. SCOPE OF LICENSE

A. DOT hereby grants to GDA and GDA hereby accepts from DOT this non-exclusive License to operate, manage and maintain the Licensed Plaza (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate, manage and maintain the Licensed Plaza while this License is in effect. GDA shall provide, or cause to be provided, services for the maintenance and/or repair of the Licensed Plaza to the reasonable satisfaction of the DOT (“Services”). Such Services shall include keeping and maintaining the Licensed Plaza in good condition and repair, all in accordance with the provisions of this License and as more fully provided in Section 3.

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

- (1) enter into an agreement(s) for the operation of Subconcession(s);
- (2) accept gifts and sponsorships; and
- (3) hold Special Events at the Licensed Plaza.

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

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

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to GDA, but that during the term of this License, as defined herein, GDA

and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, GDA and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by the DOT in accordance with this License.

2. TERM

A. The term of this License ("Term") shall be six months, commencing upon written Notice to Proceed ("Commencement Date"). This License may be renewed for up to three (3) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide GDA with sixty (60) days' advance written notice of its intent to renew.

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

3. SERVICES

A. GDA shall cause the Licensed Plaza to be maintained and/or repaired for the benefit of the public, with certain amenities, which may include but are not limited to planters, tables, chairs, and benches within the Licensed Plaza, as more particularly described in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties.

B. GDA shall provide or cause to be provided the maintenance and/or repair of the Licensed Plaza in accordance with the standards set forth in this Section to the reasonable satisfaction of DOT. All such maintenance and/or repair shall be performed in a good and workmanlike manner.

(1) Cleaning/Trash Removal:

a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza in a clean, neat and good condition.

b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza shall be routinely cleaned and maintained so as to keep such amenities and facilities in a clean, neat and good condition.

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

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

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

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

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

(2) Snow Removal:

a) Snow and ice shall be removed from all walkways within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(b) Sand or other snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

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

(3) Landscape Maintenance:

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

b) Re-seed and/or re-sod grass-covered areas as needed.

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

d) Seasonal or annual planting of varied plant life, including some flowering plants, such that at no time are planters or planting beds empty of plant life.

e) Seasonal or annual pruning.

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

(4) Repairs shall include, but are not be limited to, the following:

a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed.

b) Pavements: All paved surfaces shall be maintained in a safe and attractive condition. GDA shall not be responsible for maintaining, repairing or otherwise addressing the uniform color, or any cracks, defects, misapplications or other cosmetic issues of the existing epoxied gravel surface treatment.

c) Facilities: All facilities, equipment, and concessions areas that are located in the Licensed Plaza shall be maintained in good condition and good working order at all times.

d) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Special Event as set forth in Section 8 of this License or other City-approved events. GDA shall keep the Moveable Street Furniture in good repair.

D. GDA must comply with all recycling regulations and must obtain any and all additional permits required by law.

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

F. Advertising (other than in a form identifying GDA with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

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

H. GDA shall perform maintenance and/or repair activities to the reasonable satisfaction of DOT.

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

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

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

(3) GDA shall with respect to the maintenance and management of the Licensed Plaza, and shall require its subconcessionaire(s) with respect to the operation and management of the Subconcession(s), designate a person to handle all claims for loss or damage including all insured claims for loss or damages. GDA shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

J. GDA shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers. With respect to conditions for which GDA is not responsible, GDA shall, without delay upon learning of the condition, report the need for repairs to DOT.

K. GDA shall not be responsible for the replacement of the granite blocks and perimeter planters in the Licensed Plaza.

4. BUDGET

A. On or before April 1st of each year the License is in effect, GDA shall submit its annual budget relating to the Licensed Plaza to DOT for review and approval. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2019 shall be submitted within thirty (30) days of the Commencement Date.

B. The GDA Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs,

including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

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

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

5. REVENUE

A. "Revenue" shall mean the aggregate amount of all income, receipts and other sums from whatever source derived and without any deduction whatsoever for expenses or costs, as determined in accordance with generally accepted accounting principles, on an accrual basis, paid or obligated to be paid, directly or indirectly, to GDA, its subconcessionaire(s) or any third parties directly or indirectly retained by GDA to generate revenue as a result of the maintenance, operation and management of the Licensed Plaza. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter GDA may receive. In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License. In the event that any other non-monetary considerations are received, GDA may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other GDA funds not directly generated as a result of the maintenance, operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue. GDA shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. GDA shall apply any Revenue received from its subconcessionaire(s) in relation to the operation of the Subconcession(s) towards the Services.

C. GDA shall apply any Revenue received by it from any Special Events, sponsorships and/or gifts as contemplated in this License towards the Services.

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

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

6. SUBCONCESSION(S)

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

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

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

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

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

F. GDA shall require its subconcessionaire(s) to indemnify the City and obtain insurance coverage in accordance with the terms and conditions set forth in Sections 11 and 12 herein.

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

7. OPERATION OF THE SUBCONCESSION(S)

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

- (1) operate the Subconcession(s) as provided herein; and
- (2) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s) in good order and repair, consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

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

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

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

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

(1) GDA shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to GDA by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

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

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

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

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

(1) GDA shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate

DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

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

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

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

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

- (1) collect and safeguard all monies generated under this License;
- (2) maintain the Subconcession(s) in accordance with this License;
- (3) conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) secure the Subconcession(s).

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

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

L. Installation of additional fixed lighting or fixed sound equipment by either GDA or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT.

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

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

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

P. It is expressly understood that if GDA or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be GDA's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's reasonable prior approval.

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

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

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

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza. Additionally, GDA shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind.

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

V. (1) GDA, may or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. GDA shall not apply any Revenue to any such design, fabrication, construction and installation of any Subconcession(s) and/or subconcession structure. Upon installation, title to all construction, renovation, improvements, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Subconcession(s) and/or any subconcession structure, GDA shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of GDA or its subconcessionaire(s).

(2) GDA shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Plaza.

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

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

(5) During the term of this License, GDA shall be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, GDA shall or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of GDA or its subconcessionaire(s). Notwithstanding the foregoing, in the event of such damage, loss, or injury, GDA alternatively may, or may cause its subconcessionaire(s) to, promptly replace the Subconcession(s) and/or any subconcession structure at the sole cost and expense of GDA or its subconcessionaire(s), and with DOT's prior written approval. GDA shall not apply any Revenue to any such replacement.

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

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

(8) GDA shall provide written notice to DOT when the Subconcession(s) is substantially completed, and DOT shall inspect the Subconcession(s) within a reasonable time after receipt of such notice from GDA. After such inspection, DOT and GDA shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. GDA shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(9) In the event that GDA fails to comply with any phase of the construction of the Subconcession(s) for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

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

(11) GDA shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion.

(12) GDA shall keep DOT fully informed of GDA's progress in the construction of the Subconcession(s).

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

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

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

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

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

8. SPECIAL EVENTS AND REVENUE

A. The Licensed Plaza may be used for Special Events (as defined herein), subject to the terms and conditions set forth herein.

B. GDA shall submit, for DOT's review and comment, any program activities proposed to be held at the Licensed Plaza by the GDA, or any program activities proposed to be held at the Licensed Plaza that are sponsored or permitted by the GDA, including, but not limited to those that promote cultural, public or historical events/activities that foster tourism and/or enhance the image of the City and/or the surrounding neighborhood ("Special Events") and, pursuant to the applicable rules of the Street Activity Permitting Office ("SAPO"), the City's Office of Citywide Event Coordination and Management ("CECM") shall coordinate such programming.

C. GDA may hold Special Events at the Licensed Plaza subject to:

(1) a recommendation from DOT to SAPO that GDA be allowed to hold the proposed Special Event;

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

(3) GDA obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary, including without limitation GDA obtaining the applicable SAPO permit;

(4) If applicable, GDA shall be responsible for the payment of all SAPO permit fees in connection with Special Events;

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

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

D. GDA shall provide DOT with no less than thirty (30) days' (or such lesser period as shall be acceptable to DOT) prior written notice of any proposed Special Events.

E. The City may use the Licensed Plaza for Special Events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. In the event that DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with GDA and shall use reasonable efforts to provide GDA with thirty (30) days prior written notice of such event. .

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

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

H. GDA may collect a concession fee from the event sponsor or holder, in addition to the SAPO permit fee collected by CECM, for any commercial/promotional events (as defined in Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of GDA's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties.

9. SPONSORSHIPS AND GIFTS

A. DOT may, in its discretion, permit GDA to accept sponsorships and gifts solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5(C), such sponsorships and gifts shall be considered Revenue. Sponsorships and gifts generated for the general benefit of the GDA shall not be subject to DOT approval. However, if portions of such general sponsorships and/or gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to

the provisions of this Section 9. Any such sponsorships and/or gifts shall be restricted in size, quantity and location as deemed appropriate by DOT.

B. GDA shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships and/or gifts.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written consent. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

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

10. INSPECTION AND AUDIT OF RECORDS

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

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

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

D. GDA will provide notice to DOT of all meetings, hearings, and proceedings of GDA's Board of Directors related to the operation, management and maintenance of the Licensed Plaza, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. GDA also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, GDA's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;

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

E. GDA shall furnish to DOT a detailed audited financial statement of GDA related to the operation, management and maintenance of the Licensed Plaza each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of GDA. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, GDA shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each fiscal year which is subject to the terms and conditions of this License, GDA shall provide DOT with detailed statements, to DOT's reasonable satisfaction, concerning any revenue generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that GDA has incurred in connection with its maintenance responsibilities under this License.

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

- (1) all federal, state and local tax returns and schedules of GDA;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;

(3) sales slips, daily dated cash register receipts, sales books; and

(4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

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

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

I. The failure or refusal of GDA to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of GDA to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to GDA in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

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

waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

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

L. This Section 10 shall survive the expiration or earlier termination of this License.

11. INSURANCE

A. On or before the Commencement Date of this License, GDA (i) shall procure and maintain for the duration of the License, and (ii) with respect to the Subconcession(s), shall require its subconcessionaire(s) to procure and maintain for the duration of its subconcession agreement(s), at their sole cost and expense, such insurance as will:

(1) insure GDA and/or its subconcessionaire(s), their agents and sublicensees, and the City, its respective officials, employees and agents from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this License. Coverage under this policy shall be occurrence based and at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001 and coverage for the City as additional insured shall specifically include the City’s officials, employees and agents and shall be at least as broad as ISO Form CG 20 26 (11/85 ed.);

(2) protect GDA and/or its subconcessionaire(s) from claims under the Workers’ Compensation Law and Employer’s Liability Law; and

(3) with respect to the Subconcession(s), provide coverage against business interruption losses.

B. All required insurance policies shall be maintained with companies that may lawfully issue such policies with an A.M. Best rating of at least A-7 or a Standard & Poor’s rating of at least A, a Moody’s Investor’s Service rating of at least A-3, a Fitch Ratings rating of at least A-, or similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

C. The Minimum Insurance Coverages which GDA and its subconcessionaire(s) are required to maintain and the specific conditions which the City requires to be satisfied are as follows:

(1) Commercial General Liability Insurance: of not less than three million dollars (\$3,000,000) combined single limit per occurrence, one million dollars (\$1,000,000) personal and advertising injury, five million dollars (\$5,000,000) aggregate, and two million

dollars (\$2,000,000) products completed operations. All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. GDA shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

(2) Workers' Compensation Insurance and Disability Benefits Insurance and Employer's Liability Insurance: in accordance with the Laws of the State of New York.

(3) Automobile Liability Insurance: Commercial Automobile Liability Insurance covering all owned (if any), non-owned, hired and borrowed vehicles of not less than one million dollars (\$1,000,000) for any one occurrence. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01.

(4) Liquor Law Liability Insurance: In the event GDA shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, GDA shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

D. In the event that claims in excess of the above amounts are filed against the City, the amount of excess of such claims, or any portion thereof, may be withheld from any payment due or to become due to GDA. GDA shall file such additional security covering such claims as may be reasonably determined by DOT.

E. All insurance policies provided shall include, without limitation, the following endorsements/requirements:

(1) All policies, other than Worker's Compensation and Disability Benefits Insurance and Employer's Liability Insurance shall name the City, together with its officials, employees and agents as Additional Insureds and shall be primary and non-contributory to any insurance or self-insurance maintained by the Additional Insureds; and

(2) Notice under this Policy to the City as Additional Insured shall be addressed to each of the following: (i) the Commissioner; (ii) the Comptroller of the City of New York, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and

(3) In the event GDA receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, GDA shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, room 1005, New York, New York

10007. Notwithstanding the foregoing, GDA shall ensure that there is no interruption in any of the insurance coverage required under this Section; and

(4) The insurer waives all rights of subrogation against the City and their officials, agents and employees; and

(5) Each policy for which the City must be an additional insured shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City, including its officials, employees, and agents, arising under the License, subject to policy terms, conditions, and exclusions.

F. The limits of coverage for the City and its officials and employees as Additional Insureds shall be the greater of (i) the minimum limits set forth above or (ii) the limits provided to GDA under all primary, excess, and umbrella policies.

G. Before delivery of this License, all certificates of insurance, along with the required additional insured endorsements and certification of insurance broker or agent, shall be submitted to DOT for its approval and retention. Each certificate shall be marked "Premium Paid". If, at any time, the limits of any of said policies shall become unsatisfactory to the Commissioner, GDA and/or its subconcessionaire(s) shall promptly (within not more than 30 business days) obtain a new policy, and submit the same to DOT for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided. Failure of GDA and/or its subconcessionaire(s) to take out and/or maintain or the taking out or maintenance of any required insurance shall not relieve GDA and/or its subconcessionaire(s) from any liability under this License, nor shall the insurance requirements be construed to conflict with or limit the obligations of GDA and/or its subconcessionaire(s) concerning indemnification.

H. If any moveable fixtures and/or any improvements made by GDA or its subconcessionaire(s) shall be damaged by fire, or other cause, such damage shall be promptly repaired at the sole cost of GDA or its subconcessionaire(s) so that the moveable fixtures and/or improvements are in the same condition as prior to such damage. GDA and/or its subconcessionaire(s) shall immediately commence and diligently prosecute to completion any repair within six months, unless DOT in its reasonable discretion grants an extension of time to complete such repair. If any moveable fixtures and/or any improvements made by GDA or its subconcessionaire(s) shall be destroyed by fire, or other cause, such moveable fixtures and/or any improvements may be promptly replaced at the sole cost and expense of GDA or its subconcessionaire(s); and with DOT's prior written approval. GDA shall not apply any Revenue to any such replacement.

I. GDA shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is insured under the policy.

J. Should the policies providing for any of the insurance coverage required by the License expire during the License term, certificates confirming renewal of such insurance

coverage shall be presented to DOT for its approval and retention not less than thirty (30) days prior to the expiration date of coverage. In addition, a copy of the actual renewal policy, with all endorsements, shall be provided to DOT no later than thirty (30) days after the expiration of the policy previously provided to DOT. Failure to provide any renewal policy shall be grounds for revocation of the License.

K. For all insurance coverage required under the License, two (2) certificates of such insurance, along with the required additional insured endorsements and certification of insurance broker or agent, shall be furnished to DOT not later than twenty (20) days after receipt of Notice of Award, unless otherwise directed by DOT. In addition, with respect to all insurance coverage required by the License, with the exception of Workers' Compensation, Disability Benefits and Employer's Liability Insurance, two (2) executed copies of the insurance policies shall be provided to DOT as soon as is practicable, but in no event later than thirty (30) days after the effective date of this License, and upon demand by the New York City Law Department. For Workers' Compensation, Disability Benefits and Employer's Liability Insurance, proof must be provided on a form approved by the New York State Workers' Compensation Board; ACORD forms are not approved. Acceptance of by DOT of a certificate or policy does not excuse GDA from maintaining policies consistent with all requirements of this License or from any liability arising from its failure to do so.

L. The presence on the insured premises of engineers, inspectors, or other contractors, subcontractors, agents or employees of the City shall not invalidate the insurance coverage.

M. Upon failure of GDA and/or its subconcessionaire(s) to maintain, furnish and deliver insurance (including renewal or replacement insurance) or to provide Certificate(s) of Insurance/Insurance Policies as above provided in this Section 11, this License may, at the election of DOT, be suspended or terminated and any and all payments made by GDA on account of this License shall thereupon be retained by DOT as additional liquidated damages.

N. Failure to comply with the terms of this Section 11 shall be deemed 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.

O. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Agreement, GDA 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 GDA's own employees) as soon as required by the policy and 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, including its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. GDA 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, NY 10007.

12. INDEMNIFICATION

A. GDA shall, and with respect to the Subconcession(s), shall require that its subconcessionaire(s):

(1) Defend, indemnify, and hold the City, its agents, officials and employees harmless from and against any and all loss, liability, claims, obligations, fines, penalties, damages, costs, charges, expenses, including reasonable attorneys' fees, judgments for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of GDA and/or its subconcessionaire(s), respectively, or others, in connection with GDA's and/or its subconcessionaire(s)' operation, management, improvement and maintenance of the Licensed Plaza as referenced in Sections 3, 7, 8 and 14 herein, and for any third party claims arising out of any breach of the License.

(2) The City, its agents and employees may arrange for their own defense by the Corporation Counsel in any action, claim, suit or other proceeding, and having done so, may at any time thereafter, tender their further defense to GDA and/or its subconcessionaire(s), respectively, without prejudice to any rights to which they, or any of them may be entitled to under this Section, including the right to be indemnified and held harmless, as therein provided.

(3) GDA's and/or its subconcessionaire(s)' duty to defend, indemnify and hold the City, its agents, officials and employees harmless, as provided in this Section, shall not be abrogated, diminished or otherwise affected by GDA's and/or its subconcessionaire(s)' further duty, respectively, in their behalf to procure and maintain insurance pursuant to the provisions of Section 11 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License.

(4) GDA shall require its subconcessionaire(s) (and/or its insurers) to assume all risk in the operation of the Subconcession(s) under this License.

B. City agrees to defend, indemnify and hold GDA, its agents, officers, trustees, employees and volunteers harmless from and against any and all liabilities, obligations, damages and expenses arising from the design and construction of the Licensed Plaza, the existing epoxied gravel surface treatment, and any subsurface structural conditions.

13. ASSIGNMENT

A. No assignment, sale, mortgage or transfer of any interest of this License by GDA, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the

Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to GDA.

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

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

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

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

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

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

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

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

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

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless

such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

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

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

14. ALTERATIONS

A. GDA shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. GDA shall not apply any Revenue to any such alterations. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work excluding ordinary maintenance and/or repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

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

15. INSPECTION AT SITE

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

16. PERSONNEL

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

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

C. To the extent required by law, GDA shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital

status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. GDA shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

17. INVESTIGATIONS CLAUSE

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

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

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

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

(2) If any non-governmental party to the hearing requests an adjournment, the

Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

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

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

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

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

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

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

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

F. Definition of Terms

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

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

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

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

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

18. NOTICE

All notices from GDA to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to GDA shall be dispatched in the same manner, and delivered to GDA at 209 West 38th Street, 2nd Floor, New York, NY 10018, or such other address as may be notified from time to time.

19. TERMINATION

A. During the Term of this License, GDA shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than three months prior written notice. During any renewal terms of this License, GDA shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six months prior written notice.

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

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

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

(3) Upon GDA or subconcessionaire(s) becoming insolvent.

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

(5) Upon DOT's determination that termination is in the best interest of the City.

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

D. With regard to paragraph B(2) of this Section 19, DOT shall first give written notice to GDA outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by GDA within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section 19, DOT shall provide written notice of such termination to GDA, and this License shall terminate effective twenty-five (25) days from the date such notice is received by GDA.

F. GDA shall be held responsible for all property belonging to DOT and the City upon termination of this License. Upon such termination GDA shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

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

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

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by GDA on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License.

GDA shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between GDA and its landlord.

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

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

H. Notwithstanding any other provisions of this License, GDA shall not be relieved of liability to the City for damages sustained by the City by virtue of GDA’s breach of the License.

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

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

A. GDA shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to conform to all rules, regulations, and orders now prescribed or which may hereafter be prescribed by DOT. GDA shall comply with and shall cause its subconcessionaire(s) to comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Plaza and GDA’s use and occupation thereof, including to but not limited to the provisions of the New York State Labor Law regarding gratuities.

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

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

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 et seq. (“ADA”) and regulations promulgated

pursuant thereto, see 28 CFR Part 35. GDA shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, GDA is encouraged to exceed all applicable accessibility requirements for people with disabilities.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. GDA makes the following representations and warranties:

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

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

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

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

(5) GDA represents and warrants that, with respect to securing or soliciting this License, GDA is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.). GDA makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and GDA shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this section are not exclusive and are in addition to all other rights and remedies allowed by law or under this License.

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

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and

assuming due execution and delivery by GDA, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

22. CONFLICT OF INTEREST

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

23. NO LEASE

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

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

GDA represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of GDA to receive a license or public contracts. The Federal Employer Identification Number of GDA is 20-4850064.

25. RESERVATION OF RIGHTS AND INTERESTS

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

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

C. If GDA publishes a work discussing any aspect of performance of any service covered by this License, GDA will acknowledge therein the involvement, if any, of DOT, when

appropriate, and DOT will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

26. WAIVER OF JURY TRIAL

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

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

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

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

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

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

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

and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

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

28. CLAIMS AND ACTIONS THEREON

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

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

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

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

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

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

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

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

31. TRADEMARK

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

32. INFRINGEMENTS

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

33. ANTI-TRUST

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

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, GDA waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon GDA's request, use reasonable efforts to provide GDA with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to GDA's business. In such case, the License term shall begin to run again as soon as the public work is completed and GDA is able to resume its business.

35. DEVELOPMENT PURPOSES

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, GDA waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. GDA also agrees that this

License shall terminate with regard to the affected area(s) and GDA shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

36. SEVERABILITY

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

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

38. MODIFICATION

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

39. ENTIRE AGREEMENT

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

Agreed to this ____ day of _____, 2018:

By: _____

Michelle Craven
Assistant Commissioner
Office of Cityscape and Franchises
New York City Department of Transportation

Dated:

By: _____

Barbara Blair
Executive Director
Fashion Center
District Management Association, Inc.
(doing business as the Garment District Alliance)

Dated:

Approved as to Form and Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 2018 before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 2018 before me personally came Barbara Blair, who, being duly sworn by me did depose and say that she is the Executive Director of the Fashion Center District Management Association, Inc., (doing business as the Garment District Alliance) the corporation described in and who executed the foregoing instrument and she acknowledged that she executed the same in her official capacity and for the purposes mentioned therein.

Notary Public

Exhibit A

[Map of Licensed Plaza]

Exhibit B

[List of Amenities]

Chairs: 460

- Depth 21 in / Height 33 in / Width 19 in
- Weight 25 lbs
- Stackable in sets of 4

Tables: 164

- Diameter 30 in / Height 30 in
- Weight 94 lbs

Rock benches: 10

Tall tables: 25

Concrete Planters: 154

- XL: 5
- Tall: 49
- Wide-low: 17
- Small: 24
- Med: 50
- Small-Med: 9

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$6,529	\$26,116	\$52,232

Exhibit C
PAID SICK LEAVE LAW
CONCESSION 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. 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”).

GDA agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. GDA 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.

GDA must notify DOT’s General Counsel 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, GDA 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 GDA. GDA 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 GDA can get more information about how to comply with the PSLL. GDA acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

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

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

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

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

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

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

Exemptions and Exceptions

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

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is permitted 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 PSL, 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 PSL 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 PSL 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 PSL 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 PSL 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 PSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Calendar No. 3)

BE IT RESOLVED that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a Sole Source License Agreement (“Agreement”) with the Flatiron/23rd Street Partnership District Management Association, Inc. (“Flatiron BID”) to provide for the operation, management, and maintenance of a pedestrian plaza located at 5th Avenue and Broadway between East 21st and West 26th Streets, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Flatiron BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Flatiron BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The Agreement provides for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT. Flatiron BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

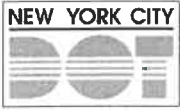
THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON

November 14, 2018

Date: _____

Signed: _____

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



Department of Transportation

POLLY TROTTEBERG, Commissioner

October 24, 2018

The Honorable Gale Brewer
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Mr. Wally Rubin, District Manager
Community Board 5
450 7th Avenue, Rm. 2109
New York, NY 10123

Re: Pedestrian Plaza Concession Notice of Public Hearing

Dear Borough President Brewer and District Manager Rubin,

Pursuant to Section 1-13(q) of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") is providing your office a copy of the Notice of Joint Public Hearing between DOT and the Franchise and Concessions Review Committee ("FCRC") for our intent to award as a concession a Sole Source License Agreement with Flatiron/23rd Street Partnership District Management Association, Inc. ("Flatiron BID") (the "Concessionaire") for the operation, management, and maintenance of a pedestrian plaza located at 5th Avenue and Broadway between East 21st and West 26th Streets, in the borough of Manhattan.

Enclosed is a full copy of the Public Notice for your records.

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in blue ink, which appears to read "E. Pincar Jr.", is written over a faint, larger blue ink signature that reads "Ed Pincar Jr.".

Edward F. Pincar Jr.
Manhattan Borough Commissioner


PUBLIC NOTICE

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held on November 13, 2018, at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“Agreement”) to the Flatiron/23rd Street Partnership District Management Association, Inc. (“Flatiron BID”), whose address is 27 West 24th Street, Suite 800B, New York, NY 10010, to provide for the operation, management, and maintenance of a pedestrian plaza located at 5th Avenue and Broadway between East 21st and West 26th Streets, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Flatiron BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Flatiron BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. Flatiron BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The Agreement will provide for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT.

A draft copy of the Agreement may be reviewed or obtained at no cost, commencing October 26, 2018 through November 13, 2018, between the hours of 10am and 4pm, excluding weekends and holidays at the NYC Department of Transportation, located at the NYC Department of Transportation, Office of Cityscape & Franchises, 55 Water Street, 9th Floor, NY, NY 10041.

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

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: NYC Department of Transportation (DOT)	RECOMMENDED CONCESSIONAIRE Name: Flatiron/23 rd Street Partnership District Management Association, Inc. ("Flatiron BID")	CONCESSION TITLE/ DESCRIPTION: Concession to operate, manage and maintain a pedestrian plaza, including through DOT approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Flatiron BID, and other similar merchandise.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	Address: 27 West 24th Street, Suite 800B, New York, NY 10010 Telephone # 212-741-2323 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 20-4850064	
	Not-for-Profit Organization Certified by DSBS as M/WBE	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
		CONCESSION I.D.# 2018Con7

LOCATION OF CONCESSION SITE(S*) Address: The pedestrian plaza is located at 5th Avenue and Broadway between East 21st and West 26th Streets, in the borough of Manhattan ("Licensed Plaza") ☐ N/A

*Attach additional sheet

Borough: Manhattan **C.B.:** 5 **Block #** N/A **Lot #** N/A

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 _____)
 > FCRC approved different selection procedure on 07/11/2018.
☐ Negotiated Acquisition*

CONCESSION AGREEMENT TERM

Initial Term: From Notice to Proceed (NTP) **To** Six (6) months from NTP

Renewal Option(s) Term: Up to three (3) five-year renewal options, exercisable at the sole discretion of DOT

Total Potential Term: 15 Years, 6 months

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

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ Annual Fee(s) \$ _____

☐ % Gross Receipts _____%

☐ The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts

☒ Other: Flatiron BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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 the 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 06/01/2018, 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 __

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 07/11/2018.
- ☐ 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 _____ Title _____

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 Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into a Sole Source License Agreement ("Agreement") with the Flatiron/23rd Street Partnership District Management Association, Inc. ("Flatiron BID").

It should be noted that previous Step 1 documents, erroneously stated the name of the Flatiron BID as the Flatiron/23rd Street Partnership Business Improvement District. However, the full and complete name of Flatiron BID is the Flatiron/23rd Street Partnership District Management Association, Inc.

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

A. SELECTION PROCEDURE

☒ Sole Source

☐ Other *Describe:*

B. NEGOTIATIONS

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

The Agreement would permit Flatiron BID to operate, manage and maintain the pedestrian plaza located at 5th Avenue and Broadway between East 21st and West 26th Streets, in the borough of Manhattan (the "Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Flatiron BID, and other similar merchandise within the Licensed Plaza. The Agreement provides for one (1) six-month term, commencing upon written Notice to Proceed, with up to three (3) five-year renewal options, exercisable at the sole discretion of DOT. Flatiron BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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:

Since the concession will not yield a profit to Flatiron BID it is in the City's best interest to enter into a sole source agreement with Flatiron BID because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. Flatiron BID was created and is funded by the property owners directly adjacent to the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a vested interest in the Licensed Plaza. Flatiron BID has twelve years of relevant experience performing the activities necessary to operate, manage and maintain public

spaces, including maintaining the streetscape, subcontracting maintenance services to reliable vendors, and involving the community and other public stakeholders in managing public spaces.

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 10/26/2018, 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 10/25/2018 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 twice in two 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 10/25/2018.

☒ New York Post, a NYC local newspaper published in the affected borough(s) on 10/25/18 and 10/26/2018.
☒ Metro, a NYC local newspaper published in the affected borough(s) on 10/25/18 and 10/26/18.

2. Public Hearing Date, Exception to Public Hearing Requirement

☒ A Public Hearing was conducted on 11/13/2018.

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.

THIS LICENSE, made as of the ____ day of _____, 2018 between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and the Flatiron/23rd Street Partnership District Management Association, Inc. ("FLATIRON BID"), a New York not-for-profit corporation.

WITNESSETH

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

WHEREAS, FLATIRON BID was formed in 2006 to improve and enhance the 38 block area from 21st Street to 28th Street and from parts of 6th Avenue up to but not including 3rd Avenue in the borough of Manhattan, City and State of New York ("Flatiron Area"), including but not limited to the improvement and maintenance of public space therein; and

WHEREAS, DOT has jurisdiction over a pedestrian plaza located on 5th Avenue and Broadway between East 21st and West 26th Streets, New York, New York ("Licensed Plaza"). The Licensed Plaza shall consist of five separate areas as illustrated in **Exhibit A**; and

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

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

WHEREAS, FLATIRON BID and DOT desire to work cooperatively to operate, manage and maintain the Licensed Plaza; and

WHEREAS, FLATIRON BID has experience performing maintenance activities in the Flatiron Area; and

WHEREAS, FLATIRON BID has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the Flatiron Area; and

WHEREAS, FLATIRON BID is willing to perform responsibilities associated with the maintenance of the Licensed Plaza for the benefit of the public; and

WHEREAS, DOT recognizes that by providing the maintenance of the Licensed Plaza, FLATIRON BID will be significantly assisting DOT's plaza program; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC") authorized DOT to enter into a Sole Source License Agreement with FLATIRON BID, to provide for the operation, management and maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcession(s), including but not limited to providing for

the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or FLATIRON BID, and other similar merchandise ("Subconcession(s)") within the Licensed Plaza.

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

1. SCOPE OF LICENSE

A. DOT hereby grants to FLATIRON BID and FLATIRON BID hereby accepts from DOT this non-exclusive License to operate, manage and maintain the Licensed Plaza (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate, manage and maintain the Licensed Plaza while this License is in effect. FLATIRON BID shall provide, or cause to be provided, services for the maintenance of the Licensed Plaza to the reasonable satisfaction of the DOT ("Services"). Such Services shall include keeping and maintaining the Licensed Plaza in good condition, all in accordance with the provisions of this License and as more fully provided in Section 3.

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

- (1) enter into an agreement(s) for the operation of Subconcession(s);
- (2) accept gifts and sponsorships; and
- (3) hold Special Events at the Licensed Plaza.

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

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

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

2. TERM

A. The term of this License ("Term") shall be six months, commencing upon written Notice to Proceed ("Commencement Date"). This License may be renewed for up to three (3) additional five-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide FLATIRON BID with sixty (60) days' advance written notice of its intent to renew.

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

3. SERVICES

A. FLATIRON BID shall cause the Licensed Plaza to be operated, managed, and maintained for the benefit of the public, with certain amenities, which may include but are not limited to planters, tables and chairs, benches, and umbrellas within the Licensed Plaza, as more particularly described in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties.

B. FLATIRON BID shall provide or cause to be provided the maintenance of the Licensed Plaza in accordance with the standards set forth in this Section to the reasonable satisfaction of DOT. All such maintenance shall be performed in a good and workmanlike manner.

(1) Cleaning/Trash Removal:

a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza in a clean, neat and good condition.

b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza shall be routinely cleaned and maintained so as to keep such amenities and facilities in a clean, neat and good condition.

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

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

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

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

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

(2) Snow Removal:

a) Snow and ice shall be removed from all walkways within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(b) Sand or other snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

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

(3) Landscape Maintenance:

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

b) Re-seed and/or re-sod grass-covered areas as needed.

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

d) Seasonal or annual planting of varied plant life, including some flowering plants, such that at no time are planters or planting beds empty of plant life.

e) Seasonal or annual pruning.

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

(4) Other Maintenance:

a) Benches or other seating: Paint benches, as needed.

b) Facilities: All facilities, equipment, and concessions areas that are located in the Licensed Plaza shall be maintained in good condition and good working order at all times.

c) Painting: All items with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Special Event as set forth in Section 8 of this License or other City-approved events. FLATIRON BID shall maintain the Moveable Street Furniture in good condition.

D. FLATIRON BID must comply with all recycling regulations and must obtain any and all additional permits required by law.

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

F. Advertising (other than in a form identifying FLATIRON BID with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

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

H. FLATIRON BID shall perform maintenance activities to the reasonable satisfaction of DOT.

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

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

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

(3) FLATIRON BID shall with respect to the maintenance and management of the Licensed Plaza, and shall require its subconcessionaire(s) with respect to the operation and management of the Subconcession(s), designate a person to handle all claims for loss or damage including all insured claims for loss or damages. FLATIRON BID shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

J. FLATIRON BID shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report the need for repairs to DOT regarding any portion or feature of the Licensed Plaza that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including but not limited to the erection of warning signs and temporary barriers. With respect to conditions for which FLATIRON BID is not responsible, FLATIRON BID shall, without delay upon learning of the condition, report the need for repairs to DOT.

K. FLATIRON BID shall not be responsible for the replacement of the granite blocks and perimeter planters in the Licensed Plaza.

4. BUDGET

A. On or before April 1st of each year the License is in effect, FLATIRON BID shall submit its annual budget relating to the Licensed Plaza to DOT for review and approval. For accounting purposes, the fiscal year shall run from July 1st to June 30th. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2019 shall be submitted within thirty (30) days of the Commencement Date.

B. The FLATIRON BID Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza.

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

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

5. REVENUE

A. "Revenue" shall mean the aggregate amount of all income, receipts and other sums from whatever source derived and without any deduction whatsoever for expenses or costs, as determined in accordance with generally accepted accounting principles, on an accrual basis, paid or obligated to be paid, directly or indirectly, to FLATIRON BID, its subconcessionaire(s) or any third parties directly or indirectly retained by FLATIRON BID to generate revenue as a result of the maintenance, operation and management of the Licensed Plaza. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter FLATIRON BID may receive. In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License. In the event that any other non-monetary considerations are received, FLATIRON BID may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other FLATIRON BID funds not directly generated as a result of the maintenance, operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue. FLATIRON BID shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. FLATIRON BID shall apply any Revenue received from its subconcessionaire(s) in relation to the operation of the Subconcession(s) towards the Services.

C. FLATIRON BID shall apply any Revenue received by it from any Special Events, sponsorships and/or gifts as contemplated in this License towards the Services.

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

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

6. SUBCONCESSION(S)

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

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

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

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

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

F. FLATIRON BID shall require its subconcessionaire(s) to indemnify the City and obtain insurance coverage in accordance with the terms and conditions set forth in Sections 11 and 12 herein.

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

7. OPERATION OF THE SUBCONCESSION(S)

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

- (1) operate the Subconcession(s) as provided herein; and
- (2) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s) in good condition, consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

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

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

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

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

Notwithstanding the foregoing, FLATIRON BID shall require its subconcessionaire(s) to submit to FLATIRON BID such statement of Revenue on a monthly basis.

(1) FLATIRON BID shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to FLATIRON BID by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

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

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

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

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

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

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

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

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

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

- (1) collect and safeguard all monies generated under this License;
- (2) maintain the Subconcession(s) in accordance with this License;
- (3) conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) secure the Subconcession(s).

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

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

L. Installation of additional fixed lighting or fixed sound equipment by either FLATIRON BID or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT.

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

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

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

P. It is expressly understood that if FLATIRON BID or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be FLATIRON BID's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's reasonable prior approval.

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

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

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

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza. Additionally, FLATIRON BID shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind.

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

V. (1) FLATIRON BID, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the

Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. FLATIRON BID shall not apply any Revenue to any such design, fabrication, construction and installation of any Subconcession(s) and/or subconcession structure. Upon installation, title to all construction, renovation, improvements, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Subconcession(s) and/or any subconcession structure, FLATIRON BID shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of FLATIRON BID or its subconcessionaire(s).

(2) FLATIRON BID shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Plaza.

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

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

(5) During the term of this License, FLATIRON BID shall be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, FLATIRON BID shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of FLATIRON BID or its subconcessionaire(s). Notwithstanding the foregoing, in the event of such damage, loss, or injury, FLATIRON BID alternatively may, or may cause its subconcessionaire(s) to, promptly replace the Subconcession(s) and/or any subconcession structure at the sole cost and expense of FLATIRON BID or its subconcessionaire(s), and with DOT's prior written approval. FLATIRON BID shall not apply any Revenue to any such replacement.

(6) FLATIRON BID shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans,

specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. FLATIRON BID shall or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

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

(8) FLATIRON BID shall provide written notice to DOT when the Subconcession(s) is substantially completed, and DOT shall inspect the Subconcession(s) within a reasonable time after receipt of such notice from FLATIRON BID. After such inspection, DOT and FLATIRON BID shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. FLATIRON BID shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(9) In the event that FLATIRON BID fails to comply with any phase of the construction of the Subconcession(s) for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(10) FLATIRON BID shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) during such construction. FLATIRON BID shall or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by FLATIRON BID.

(11) FLATIRON BID shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion.

(12) FLATIRON BID shall keep DOT fully informed of FLATIRON BID's progress in the construction of the Subconcession(s).

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

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

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

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

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

8. SPECIAL EVENTS AND REVENUE

A. The Licensed Plaza may be used for Special Events (as defined herein), subject to the terms and conditions set forth herein.

B. FLATIRON BID shall submit, for DOT's review and comment, any program activities proposed to be held at the Licensed Plaza by the FLATIRON BID, or any program activities proposed to be held at the Licensed Plaza that are sponsored or permitted by the FLATIRON BID, including, but not limited to those that promote cultural, public or historical events/activities that foster tourism and/or enhance the image of the City and/or the surrounding neighborhood ("Special Events") and, pursuant to the applicable rules of the Street Activity Permitting Office ("SAPO"), the City's Office of Citywide Event Coordination and Management ("CECM") shall coordinate such programming.

C. FLATIRON BID may hold Special Events at the Licensed Plaza subject to:

(1) a recommendation from DOT to SAPO that FLATIRON BID be allowed to hold the proposed Special Event;

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

(3) FLATIRON BID obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary, including without limitation FLATIRON BID obtaining the applicable SAPO permit;

(4) If applicable, FLATIRON BID shall be responsible for the payment of all SAPO permit fees in connection with Special Events;

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

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

D. FLATIRON BID shall provide DOT with no less than thirty (30) days' (or such lesser period as shall be acceptable to DOT) prior written notice of any proposed Special Events.

E. The City may use the Licensed Plaza for Special Events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. In the event that DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such use with FLATIRON BID and shall use reasonable efforts to provide FLATIRON BID with thirty (30) days prior written notice of such event. .

F. FLATIRON BID shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its events, and DOT shall pay for any such fees or royalties relating to DOT's events.

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

H. FLATIRON BID may collect a concession fee from the event sponsor or holder, in addition to the SAPO permit fee collected by CECM, for any commercial/promotional events (as defined in Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of FLATIRON BID's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties.

9. SPONSORSHIPS AND GIFTS

A. DOT may, in its discretion, permit FLATIRON BID to accept sponsorships and gifts solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5(C), such sponsorships and gifts shall be considered Revenue. Sponsorships and gifts generated for the general benefit of the FLATIRON BID shall not be subject to DOT approval. However, if portions of such general sponsorships and/or gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this Section 9. Any such sponsorships and/or gifts shall be restricted in size, quantity and location as deemed appropriate by DOT.

B. FLATIRON BID shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships and/or gifts.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written consent. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

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

10. INSPECTION AND AUDIT OF RECORDS

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

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

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

D. FLATIRON BID will provide notice to DOT of all meetings, hearings, and proceedings of FLATIRON BID's Board of Directors related to the operation, management and maintenance of the Licensed Plaza, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. FLATIRON BID also will make available, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, FLATIRON BID's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;

(3) minutes of meetings of the Board of Directors;

(4) reports of accidents and other incidents;

(5) programs, research, and other reports and publications in connection with FLATIRON BID's responsibilities in the Licensed Plaza pursuant to this License; and

(6) records of FLATIRON BID sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of FLATIRON BID under this License.

E. FLATIRON BID shall furnish to DOT a detailed audited financial statement of FLATIRON BID related to the operation, management and maintenance of the Licensed Plaza each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts proposed to be allocated for the operation, management and maintenance of the Licensed Plaza, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of FLATIRON BID. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, FLATIRON BID shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, no more than thirty (30) days after the end of each fiscal year which is subject to the terms and conditions of this License, FLATIRON BID shall provide DOT with detailed statements, to DOT's reasonable satisfaction, concerning any revenue generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that FLATIRON BID has incurred in connection with its maintenance responsibilities under this License.

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

(1) all federal, state and local tax returns and schedules of FLATIRON BID;

(2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;

(3) sales slips, daily dated cash register receipts, sales books; and

(4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

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

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

I. The failure or refusal of FLATIRON BID to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of FLATIRON BID to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to FLATIRON BID in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

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

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

L. This Section 10 shall survive the expiration or earlier termination of this License.

11. INSURANCE

A. On or before the Commencement Date of this License, FLATIRON BID (i) shall procure and maintain for the duration of the License, and (ii) with respect to the Subconcession(s), shall require its subconcessionaire(s) to procure and maintain for the duration of its subconcession agreement(s), at their sole cost and expense, such insurance as will:

(1) insure FLATIRON BID and/or its subconcessionaire(s), their agents and sublicensees, and the City, its respective officials, employees and agents from claims for property damage and/or bodily injury, including death, which may arise from any of the operations under this License. Coverage under this policy shall be occurrence based and at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001 and coverage for the City as additional insured shall specifically include the City’s officials, employees and agents and shall be at least as broad as ISO Form CG 20 26 (11/85 ed.);

(2) protect FLATIRON BID and/or its subconcessionaire(s) from claims under the Workers’ Compensation Law and Employer’s Liability Law; and

(3) with respect to the Subconcession(s), provide coverage against business interruption losses.

B. All required insurance policies shall be maintained with companies that may lawfully issue such policies with an A.M. Best rating of at least A-7 or a Standard & Poor’s rating of at least A, a Moody’s Investor’s Service rating of at least A-3, a Fitch Ratings rating of at least A-, or similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

C. The Minimum Insurance Coverages which FLATIRON BID and its subconcessionaire(s) are required to maintain and the specific conditions which the City requires to be satisfied are as follows:

(1) Commercial General Liability Insurance: of not less than three million dollars (\$3,000,000) combined single limit per occurrence, one million dollars (\$1,000,000) personal and advertising injury, five million dollars (\$5,000,000) aggregate, and two million dollars (\$2,000,000) products completed operations. All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. FLATIRON BID shall ensure that any such self-insurance program provides the City with all rights that would be provided by

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

(2) Workers' Compensation Insurance and Disability Benefits Insurance and Employer's Liability Insurance: in accordance with the Laws of the State of New York.

(3) Automobile Liability Insurance: Commercial Automobile Liability Insurance covering all owned (if any), non-owned, hired and borrowed vehicles of not less than one million dollars (\$1,000,000) for any one occurrence. Coverage shall be at least as broad as the most recently issued ISO Form CA 00 01.

(4) Liquor Law Liability Insurance: In the event FLATIRON BID shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, FLATIRON BID shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

D. In the event that claims in excess of the above amounts are filed against the City, the amount of excess of such claims, or any portion thereof, may be withheld from any payment due or to become due to FLATIRON BID. FLATIRON BID shall file such additional security covering such claims as may be reasonably determined by DOT.

E. All insurance policies provided shall include, without limitation, the following endorsements/requirements:

(1) All policies, other than Worker's Compensation and Disability Benefits Insurance and Employer's Liability Insurance shall name the City, together with its officials, employees and agents as Additional Insureds and shall be primary and non-contributory to any insurance or self-insurance maintained by the Additional Insureds; and

(2) Notice under this Policy to the City as Additional Insured shall be addressed to each of the following: (i) the Commissioner; (ii) the Comptroller of the City of New York, attn: Office of Contract Administration, Municipal Building, Room 835, New York, NY 10007; and

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

(4) The insurer waives all rights of subrogation against the City and their officials, agents and employees; and

(5) Each policy for which the City must be an additional insured shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City, including its officials, employees, and agents, arising under the License, subject to policy terms, conditions, and exclusions.

F. The limits of coverage for the City and its officials and employees as Additional Insureds shall be the greater of (i) the minimum limits set forth above or (ii) the limits provided to FLATIRON BID under all primary, excess, and umbrella policies.

G. Before delivery of this License, all certificates of insurance, along with the required additional insured endorsements and certification of insurance broker or agent, shall be submitted to DOT for its approval and retention. Each certificate shall be marked "Premium Paid". If, at any time, the limits of any of said policies shall become unsatisfactory to the Commissioner, FLATIRON BID and/or its subconcessionaire(s) shall promptly (within not more than 30 business days) obtain a new policy, and submit the same to DOT for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided. Failure of FLATIRON BID and/or its subconcessionaire(s) to take out and/or maintain or the taking out or maintenance of any required insurance shall not relieve FLATIRON BID and/or its subconcessionaire(s) from any liability under this License, nor shall the insurance requirements be construed to conflict with or limit the obligations of FLATIRON BID and/or its subconcessionaire(s) concerning indemnification.

H. If any moveable fixtures and/or any improvements made by FLATIRON BID or its subconcessionaire(s) shall be damaged by fire, or other cause, such damage shall be promptly repaired at the sole cost of FLATIRON BID or its subconcessionaire(s) so that the moveable fixtures and/or improvements are in the same condition as prior to such damage. FLATIRON BID and/or its subconcessionaire(s) shall immediately commence and diligently prosecute to completion any repair within six months, unless DOT in its reasonable discretion grants an extension of time to complete such repair. If any moveable fixtures and/or any improvements made by FLATIRON BID or its subconcessionaire(s) shall be destroyed by fire, or other cause, such moveable fixtures and/or any improvements may be promptly replaced at the sole cost and expense of FLATIRON BID or its subconcessionaire(s); and with DOT's prior written approval. FLATIRON BID shall not apply any Revenue to any such replacement.

I. FLATIRON BID shall be solely responsible for the payment of all premiums for all required insurance policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the City is insured under the policy.

J. Should the policies providing for any of the insurance coverage required by the License expire during the License term, certificates confirming renewal of such insurance coverage shall be presented to DOT for its approval and retention not less than thirty (30) days prior to the expiration date of coverage. In addition, a copy of the actual renewal policy, with all endorsements, shall be provided to DOT no later than thirty (30) days after the expiration of the policy previously provided to DOT. Failure to provide any renewal policy shall be grounds for revocation of the License.

K. For all insurance coverage required under the License, two (2) certificates of such insurance, along with the required additional insured endorsements and certification of insurance broker or agent, shall be furnished to DOT not later than twenty (20) days after receipt of Notice of Award, unless otherwise directed by DOT. In addition, with respect to all insurance coverage required by the License, with the exception of Workers' Compensation, Disability Benefits and Employer's Liability Insurance, two (2) executed copies of the insurance policies shall be provided to DOT as soon as is practicable, but in no event later than thirty (30) days after the effective date of this License, and upon demand by the New York City Law Department. For Workers' Compensation, Disability Benefits and Employer's Liability Insurance, proof must be provided on a form approved by the New York State Workers' Compensation Board; ACORD forms are not approved. Acceptance of by DOT of a certificate or policy does not excuse FLATIRON BID from maintaining policies consistent with all requirements of this License or from any liability arising from its failure to do so.

L. The presence on the insured premises of engineers, inspectors, or other contractors, subcontractors, agents or employees of the City shall not invalidate the insurance coverage.

M. Upon failure of FLATIRON BID and/or its subconcessionaire(s) to maintain, furnish and deliver insurance (including renewal or replacement insurance) or to provide Certificate(s) of Insurance/Insurance Policies as above provided in this Section 11, this License may, at the election of DOT, be suspended or terminated and any and all payments made by FLATIRON BID on account of this License shall thereupon be retained by DOT as additional liquidated damages.

N. Failure to comply with the terms of this Section 11 shall be deemed 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.

O. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Agreement, FLATIRON BID 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 FLATIRON BID's own employees) as soon as required by the policy and 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, including its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. FLATIRON BID 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, NY 10007.

12. INDEMNIFICATION

A. FLATIRON BID shall, and with respect to the Subconcession(s), shall require that its subconcessionaire(s):

(1) Defend, indemnify, and hold the City, its agents, officials and employees harmless from and against any and all loss, liability, claims, obligations, fines, penalties, damages, costs, charges, expenses, including reasonable attorneys' fees, judgments for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of FLATIRON BID and/or its subconcessionaire(s), respectively, or others, in connection with FLATIRON BID's and/or its subconcessionaire(s)' operation, management, improvement and maintenance of the Licensed Plaza as referenced in Sections 3, 7, 8 and 14 herein, and for any third party claims arising out of any breach of the License.

(2) The City, its agents and employees may arrange for their own defense by the Corporation Counsel in any action, claim, suit or other proceeding, and having done so, may at any time thereafter, tender their further defense to FLATIRON BID and/or its subconcessionaire(s), respectively, without prejudice to any rights to which they, or any of them may be entitled to under this Section, including the right to be indemnified and held harmless, as therein provided.

(3) FLATIRON BID's and/or its subconcessionaire(s)' duty to defend, indemnify and hold the City, its agents, officials and employees harmless, as provided in this Section, shall not be abrogated, diminished or otherwise affected by FLATIRON BID's and/or its subconcessionaire(s)' further duty, respectively, in their behalf to procure and maintain insurance pursuant to the provisions of Section 11 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License.

(4) FLATIRON BID shall require its subconcessionaire(s) (and/or its insurers) to assume all risk in the operation of the Subconcession(s) under this License.

B. City agrees to defend, indemnify and hold FLATIRON BID, its agents, officers, trustees, employees and volunteers harmless from and against any and all liabilities, obligations, damages and expenses arising from the design and construction of the Licensed Plaza, the existing epoxied gravel surface treatment, and any subsurface structural conditions.

13. ASSIGNMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

14. ALTERATIONS

A. FLATIRON BID shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. FLATIRON BID shall not apply any Revenue to any such alterations. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work excluding ordinary maintenance, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

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

15. INSPECTION AT SITE

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

16. PERSONNEL

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

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

C. To the extent required by law, FLATIRON BID shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national

origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. FLATIRON BID shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

17. INVESTIGATIONS CLAUSE

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

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

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

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

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

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

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

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

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

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

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

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

F. Definition of Terms

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

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

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

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

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

18. NOTICE

All notices from FLATIRON BID to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6th Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to FLATIRON BID shall be dispatched in the same manner, and delivered to FLATIRON BID at 27 West 24th Street, Suite 800B, New York, NY 10010, or such other address as may be notified from time to time.

19. TERMINATION

A. During the Term of this License, FLATIRON BID shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than three months prior written notice. During any renewal terms of this License, FLATIRON BID shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six months prior written notice.

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

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

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

(3) Upon FLATIRON BID or subconcessionaire(s) becoming insolvent.

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

(5) Upon DOT's determination that termination is in the best interest of the City.

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

D. With regard to paragraph B(2) of this Section 19, DOT shall first give written notice to FLATIRON BID outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by FLATIRON BID within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section 19, DOT shall provide written notice of such termination to FLATIRON BID, and this License shall terminate effective twenty-five (25) days from the date such notice is received by FLATIRON BID.

F. FLATIRON BID shall be held responsible for all property belonging to DOT and the City upon termination of this License. Upon such termination FLATIRON BID shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

G. Upon termination of this License, FLATIRON BID shall comply with DOT close-out procedures, including but not limited to:

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

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

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

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

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

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

20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

A. FLATIRON BID shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to conform to all rules, regulations, and orders now prescribed or which may hereafter be prescribed by DOT. FLATIRON BID shall comply with and shall cause its subconcessionaire(s) to comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Plaza and FLATIRON BID's use and occupation thereof, including to but not limited to the provisions of the New York State Labor Law regarding gratuities.

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

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

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 et seq. ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. FLATIRON BID shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone.

To the extent possible, FLATIRON BID is encouraged to exceed all applicable accessibility requirements for people with disabilities.

21. REPRESENTATIONS, WARRANTIES AND COVENANTS

A. FLATIRON BID makes the following representations and warranties:

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

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

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

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

(5) The FLATIRON BID represents and warrants that, with respect to securing or soliciting this License, FLATIRON BID is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a et seq.). FLATIRON BID makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and FLATIRON BID shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this section are not exclusive and are in addition to all other rights and remedies allowed by law or under this License.

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

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and

assuming due execution and delivery by FLATIRON BID, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

22. CONFLICT OF INTEREST

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

23. NO LEASE

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

24. FEDERAL EMPLOYER IDENTIFICATION NUMBER

FLATIRON BID represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of FLATIRON BID to receive a license or public contracts. The Federal Employer Identification Number of FLATIRON BID is 20-4850064.

25. RESERVATION OF RIGHTS AND INTERESTS

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

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

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

26. WAIVER OF JURY TRIAL

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

27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

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

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

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

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

(4) If FLATIRON BID commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, FLATIRON BID shall consent to a transfer of the action to a court of

competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, FLATIRON BID shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

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

28. CLAIMS AND ACTIONS THEREON

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

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

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

29. CLAIM AGAINST OFFICERS OR EMPLOYEES

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

30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

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

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

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

31. TRADEMARK

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

32. INFRINGEMENTS

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

33. ANTI-TRUST

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

34. EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, FLATIRON BID waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon FLATIRON BID's request, use reasonable efforts to provide FLATIRON BID with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to FLATIRON BID's business. In such case, the License term shall begin to run again as soon as the public work is completed and FLATIRON BID is able to resume its business.

35. DEVELOPMENT PURPOSES

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, FLATIRON BID waives any and all claims to an award under this License or other damages by

reason of such requirement or work, including but not limited to awards for fixtures. FLATIRON BID also agrees that this License shall terminate with regard to the affected area(s) and FLATIRON BID shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

36. SEVERABILITY

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

37. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

38. MODIFICATION

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

39. ENTIRE AGREEMENT

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

NO FURTHER TEXT ON THIS PAGE

Agreed to this ____ day of _____, 2018:

By: _____

Michelle Craven
Assistant Commissioner
Office of Cityscape and Franchises
New York City Department of Transportation

Dated:

By: _____

Executive Director
Flatiron/23rd Street Partnership
District Management Association, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

Acting Corporation Counsel

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 2018 before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK)

ss:

COUNTY OF NEW YORK)

On this day of , 2018 before me personally came _____, who, being duly sworn by me did depose and say that s/he is the Executive Director of the Flatiron/23rd Street Partnership District Management Association, Inc., the corporation described in and who executed the foregoing instrument and s/he acknowledged that s/he executed the same in her official capacity and for the purposes mentioned therein.

Notary Public

Exhibit A

[Map of Licensed Plaza]

Exhibit B

[List of Amenities]

- 42" diameter x 30" tall planters (67)
- 34" diameter x 25" tall planters (125)
- Chairs (120)
- Tables (40)
- Umbrellas (30)
- Benches (4)

SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$2,869	\$11,474	\$22,949

Exhibit C
PAID SICK LEAVE LAW
CONCESSION 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 FLATIRON BID agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The FLATIRON BID 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 FLATIRON BID must notify DOT’s General Counsel 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 FLATIRON BID 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 FLATIRON BID.

The FLATIRON BID 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 FLATIRON BID can get more information about how to comply with the PSLL. The FLATIRON BID acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of

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.

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 PSLI 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 PSLI. 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 PSLI 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 permitted 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.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 4)

BE IT RESOLVED that the Franchise and Concession Review Committee (FCRC) hereby authorizes the New York City Department of Transportation (DOT) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with the Meatpacking District Management Association, Inc., (“Meatpacking BID”) to provide for the operation, management and maintenance of a pedestrian plaza located at 9th Avenue between Gansevoort Street and West 15th Street in Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Meatpacking BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Meatpacking BID in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

BE IT FURTHER RESOLVED that DOT shall submit the Agreement it proposes to enter into with Meatpacking BID to the FCRC for approval.

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

November 14, 2018

Date: _____

Signed: _____

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



Department of Transportation

POLLY TROTTERBERG, Commissioner

October 5, 2018

The Honorable Gale Brewer
Manhattan Borough President
1 Centre Street, 19th Floor
New York, NY 10007

Mr. Jesse Bodine, District Manager
Manhattan Community Board 4
330 West 42nd Street, 26th Floor
New York, NY 10036

Mr. Bob Gormley, District Manager
Manhattan Community Board 2
3 Washington Square Village, #1A
New York, NY 10012

Re: Pedestrian Plaza Concession

Dear Ms. Brewer, Mr. Gormley, and Mr. Bodine:

Pursuant to Section 1-16 of the Concession Rules of the City of New York, the New York City Department of Transportation ("DOT") intends to seek approval from the Franchise and Concession Review Committee ("FCRC") to utilize a different procedure to negotiate a Sole Source Concession Agreement ("Agreement") with an organization (the "Concessionaire") for the operation, management and maintenance of a pedestrian plaza located at 9th Avenue between Gansevoort Street and West 15th Street, in the borough of Manhattan ("Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Concessionaire, and other similar merchandise within the Licensed Plaza.

DOT has identified the Meatpacking District Management Association, Inc. ("Meatpacking BID") as a potential Concessionaire, but DOT will consider additional expressions of interest from other qualified and experienced organizations. As such, a public notice is being placed in the City Record to inform other qualified organizations of this opportunity.

It should be noted that DOT previously received FCRC Step 1 approval on June 14, 2017 to enter into negotiations with the Meatpacking Improvement Association, Inc. ("MPIA"). However, since then MPIA has been subsumed under the Meatpacking BID.



Department of Transportation

POLLY TROTTEBERG, Commissioner

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

If you have any questions, please feel free to contact me at 212-839-6210.

Sincerely,

A handwritten signature in blue ink, reading "Edward F. Pincus, Jr.", is positioned above the printed name.

Edward Pincus, Jr.
Manhattan Borough Commissioner

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 Transportation (DOT)	CONCESSION TITLE/DESCRIPTION: Operation, management and maintenance of a pedestrian plaza located at 9th Avenue between Gansevoort Street and West 15th Street in the Borough of Manhattan
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # 2018Con8

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: Meatpacking District Management Association, Inc. ☒ EIN ☐ SSN # 810788036

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>Maintenance costs</u>
LOCATION OF CONCESSION SITE(S) <input type="checkbox"/> N/A Address: <u>At 9th Avenue between Gansevoort Street and West 15th Street, Borough of Manhattan (see attached map)</u> Borough: <u>Manhattan</u> C.B. <u>2, 4</u> Block # <u>N/A</u> Lot # <u>N/A</u>	

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 Michelle Craven Title Assistant Commissioner for Cityscape and Franchises

Signature  Date 10/19/18
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  Date 11/1/18
City Chief Procurement Officer

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 Transportation ("DOT") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedures") 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.***

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the Meatpacking District Management Association, Inc. ("Meatpacking BID") for the operation, management and maintenance of a pedestrian plaza located at 9th Avenue between Gansevoort Street and West 15th Street, in the borough of Manhattan ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on June 14, 2017 to enter into negotiations with the Meatpacking Improvement Association, Inc. ("MPIA"). However, since then MPIA has been subsumed under the Meatpacking BID.

Meatpacking BID would have the right to provide for the operation and management of the Licensed Plaza in exchange for ongoing maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcessions providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Meatpacking BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Meatpacking BID in the basic form of Request for Proposals or Request for Bids, and subject to DOT's prior written approval of both solicitation and award.

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

The intent of the Agreement is that all revenue received by Meatpacking BID from the operation of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to Meatpacking BID, a determination was made to not solicit Competitive Sealed Proposals.

It is in the City's best interest to enter into the Agreement using a different procedure with Meatpacking BID. because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. Meatpacking BID was created and is funded by the property owners surrounding the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

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

On November 14, 2018, DOT intends to seek FCRC authorization to negotiate the Agreement with Meatpacking BID for the operation, management and maintenance of the Licensed Plaza ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with Meatpacking BID.

Once negotiated and if determined by DOT to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with Meatpacking BID to the FCRC and request the required FCRC authorization to enter into the Agreement 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 to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. ☒ **N/A**