

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

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 an amendment to the existing License Agreement (Agreement) with the Times Square District Management Association, Inc. d/b/a the Times Square Alliance, (TSA), to provide for the operation, management and maintenance of the pedestrian plazas located on Broadway and 7th Avenue between West 41st and West 47th Streets, Borough of Manhattan (Licensed Plaza). DOT anticipates that the amendment would extend the term of the existing Agreement through July 1, 2020.

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

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

September 12, 2018

Date: _____

Signed: _____

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

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

AGENCY: New York City Department of Transportation (DOT)	CONCESSION TITLE/DESCRIPTION: Operation, management and maintenance of the pedestrian plazas located on Broadway and 7th Avenue between West 41st and West 47th Streets, Borough of Manhattan
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # 2009Concessi2
SELECTION PROCEDURE (* City Chief Procurement Officer approval of CPSR required)	
<input type="checkbox"/> Competitive Sealed Bids (CSB) <input type="checkbox"/> Competitive Sealed Proposals (CSP)*	
<input checked="" type="checkbox"/> Different Procedure * (<input type="checkbox"/> Sole Source Agreement <input checked="" type="checkbox"/> Other) Intent to negotiate an amendment to the existing License Agreement between DOT and the Times Square District Management Association, Inc. d/b/a Times Square Alliance	
<input type="checkbox"/> Negotiated Concession*	
Recommended Concessionaire: <u>Times Square District Management Association, Inc. d/b/a the Times Square Alliance</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3627527</u>	
Attach Memo(s) *	
CONCESSION AGREEMENT TERM Initial Term: <u>To be Negotiated</u> Renewal Option(s) Term: <u>To be Negotiated</u> Total Potential Term: <u>To be Negotiated</u>	ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply) <input type="checkbox"/> Additional description attached <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$ _____ v. _____% of Gross Receipts <input checked="" type="checkbox"/> Other formula: <u>Maintenance costs</u>
LOCATION OF CONCESSION SITE(S) <input type="checkbox"/> N/A Address: <u>Broadway and 7th Avenue between West 41st and West 47th Streets, Borough of Manhattan (see attached map)</u> Borough: <u>Manhattan C.B. 5 Block # N/A Lot # N/A</u>	
CONCESSION TYPE (Check all that apply)	
> Significant Concession: <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES Basis: <input checked="" type="checkbox"/> Total potential term =>10 years <input checked="" type="checkbox"/> Projected annual income/value to City >\$100,000 <input type="checkbox"/> Major Concession	
> Major Concession: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.	
NOTIFICATION REQUIREMENTS	
Subject concession will be awarded by CSB or CSP. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
If YES, check the applicable box(es) below:	
<input type="checkbox"/> The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.	
<input type="checkbox"/> The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.	
<input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.	
<input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.	

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 an amendment to its existing 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 an amendment to the Agreement with the Times Square District Management Association, Inc. d/b/a the Times Square Alliance (TSA) for the operation, management and maintenance of the pedestrian plazas located on Broadway and 7th Avenue between West 41st and West 47th Streets, Borough of Manhattan (Licensed Plaza).

DOT anticipates that the amended Agreement would extend the term of the existing agreement through July 1, 2020 for the reasons set forth in Section B(2) below.

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

The current Agreement between DOT and TSA to operate, manage and maintain the Licensed Plaza expires on December 31, 2018. In September 2017, DOT received Step 1 approval from the Franchise and Concession Review Committee (FCRC) to utilize a different procedure to negotiate a sole source license agreement with TSA to operate, manage and maintain the Licensed Plaza plus additional plaza areas on Broadway from 47th to 53rd Streets. As a result of the additional plaza areas, the concession would be considered a major concession subject to the Uniform Land Use Review Procedure (ULURP).

Shortly thereafter, DOT began the ULURP process, however, DOT will be unable to complete ULURP and obtain FCRC Step 2 approval of the sole source major concession prior to the expiration of the Agreement on December 31, 2018. DOT is therefore requesting authorization to negotiate an extension to the term of the existing Agreement in order to give DOT time to complete the ULURP process and obtain FCRC approval of the new concession with TSA.

For the reasons set forth above, DOT believes that it is in the City's best interest to amend TSA's existing Agreement to extend the term on a short-term basis rather than proceed with a competitive solicitation process.

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

On September 12, 2018, DOT intends to seek FCRC authorization to negotiate an amended Agreement with TSA 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 amended Agreement with the TSA.

DOT anticipates that this amendment to extend the current term by 18 months will be a significant concession. 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 amended Agreement before presenting it to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the amendment of the current concession to be non-significant, DOT will present the fully negotiated amended Agreement with TSA to the FCRC and request the required FCRC authorization to enter into the amended Agreement directly (without the need for an initial public hearing).

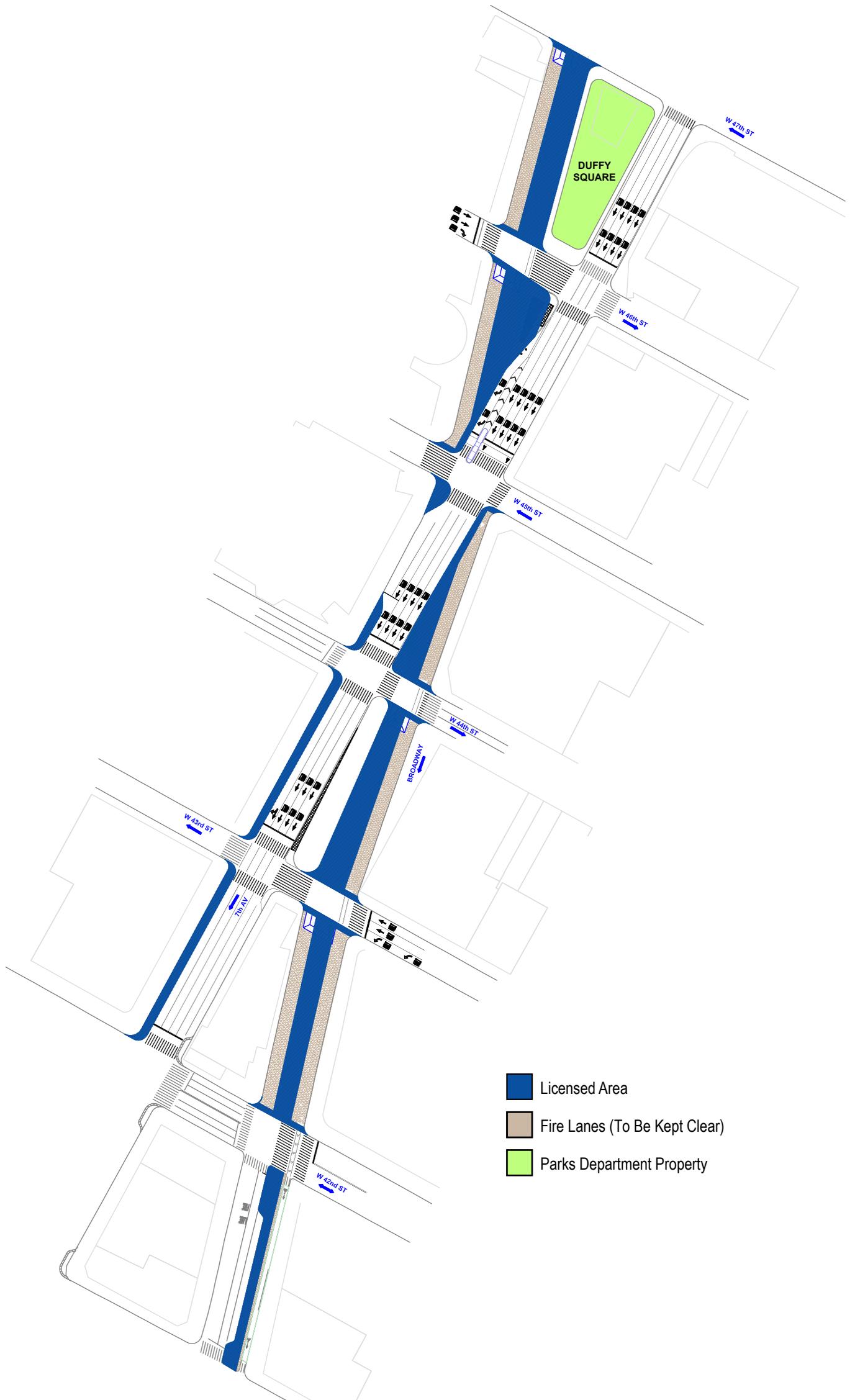
3b. ***If the selection procedure is a negotiated concession, check the applicable box:*** **N/A**

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**



- Licensed Area
- Fire Lanes (To Be Kept Clear)
- Parks Department Property

Times Square Master Concession Agreement
Licensed Area (shaded in blue)

Total area = 41,250 sq. ft. (0.95 acres)





August 3, 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

Dear Borough President Brewer and Mr. Rubin:

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 an amended Concession Agreement ("Agreement") with the Times Square District Management Association, Inc. d/b/a the Times Square Alliance ("TSA") for the operation, management and maintenance of the pedestrian plazas on Broadway and 7th Avenue between West 41st and West 47th Streets, in the borough of Manhattan ("Licensed Plaza"). DOT anticipates that the amended Agreement would extend the term of the existing Agreement through July 1, 2020 in order to give DOT time to complete the ULURP process currently underway in connection with a proposed sole source major concession with TSA for the operation, management and maintenance of the Licensed Plaza and additional plaza areas on Broadway from 47th to 53rd Streets and to obtain FCRC approval of such concession.

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

Sincerely,

A handwritten signature in blue ink that reads "E. Pincar, Jr." with a stylized flourish at the end.

Edward F. Pincar, Jr.
Acting Manhattan Borough Commissioner