

**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 enter into a Sole Source License Agreement (“License Agreement”) with the Hudson Yards/Hell’s Kitchen Business Improvement District, Inc. (“HY/HK BID”), for a potential seventeen (17) year term, for the operation of various food concessions, farmers and winter holiday markets, and to receive the revenue from certain third party events in Hudson Boulevard Park, Manhattan. Such concessions will include a food concession at the existing kiosk building and seating area; mobile food trucks and/or carts; farmers markets and winter holiday markets that do not materially displace other public park uses and are limited in duration to a few weeks per year (or, in the case of farmers markets, a few days per week), and other such similar uses as may be approved in advance by Parks. Under the License Agreement, Parks also grants to HY/HK BID the right to receive the fees generated by certain third party events (no more than 12 times per year and twice per month).

In lieu of a license fee, HY/HK BID will use all gross receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Hudson Boulevard Park, in accordance with the terms of the M&O Agreement (as defined in the License Agreement) and as otherwise set forth in this License Agreement.

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

June 13, 2018

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

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

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

**CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET**

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

<p><b>AGENCY:</b> New York City Department of Parks and Recreation ("Parks")</p>	<p align="center"><b>RECOMMENDED CONCESSIONAIRE</b></p> <p><b>Name:</b> <u>Hudson Yards/Hell's Kitchen Business Improvement District, Inc. (HY/HK BID)</u></p> <p><b>Address:</b> <u>412 West 42<sup>nd</sup> Street, 3<sup>rd</sup> Floor, New York, NY 10036</u></p> <p><b>Telephone #</b> <u>(212)-239-1619</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>47-1247857</u></p> <p><b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b></p> <p><b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b></p>	<p><b>CONCESSION TITLE/ DESCRIPTION:</b></p> <p><u>Sole Source License Agreement with the Hudson Yards/Hell's Kitchen Business Improvement District, Inc. for the operation of various food concessions, farmers and winter holiday markets, and to receive the revenue from certain third-party events in Hudson Boulevard Park, Manhattan.</u></p> <p><b>CONCESSION I.D. #</b> <u>M399-0</u></p>
<p><b># VOTES required for proposed action</b> <b>= 4</b> <input type="checkbox"/> <b>N/A</b></p>		

**LOCATION OF CONCESSION SITE(S)\* Address** Intersection of 10 & 11 Ave, West 33 & West 39 Street; New York, NY  
**Borough** Manhattan **C.B.** 4 **Block** #705 Lot #53; Block #706 Lot #13; Block #707 Lot #14

**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 10/14/2015.
- Negotiated Concession\*

**CONCESSION AGREEMENT TERM**

**Initial Term:** Ten (10) years from the date of execution of the M&O Agreement (which is August 15, 2025)

**Renewal Option(s) Term:** Up to two (2) additional five (5) year terms, upon the agreement of the parties

**Total Potential Term:** Seventeen (17) Years

\* >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** In lieu of a license fee, HY/HK BID will use all gross receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Hudson Boulevard Park, in accordance with the terms of the M&O Agreement (as defined in the License Agreement) and as otherwise set forth in this License Agreement.

**NOTIFICATION REQUIREMENTS**

**Subject concession was awarded by CSB or CSP.**

**YES**  **NO**

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

The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_\_/\_\_\_/\_\_\_, which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_\_/\_\_\_/\_\_\_, which was at least 40 days prior to issuance of the

solicitation.

If **NO**, check the applicable box below:

- The Agency certifies that each affected CB/BP received written notice by 09/04/2015, which was at least 40 days in advance of the FCRC meeting on 10/14/2015 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 \_\_\_\_\_.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han Title Director of Concessions

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

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

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

City Chief Procurement Officer

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

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Parks & Recreation ("Parks") 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 ("License Agreement") with the Hudson Yards/Hell's Kitchen Business Improvement District, Inc. ("HY/HK BID") for the operation of various food concessions, farmers and winter holiday markets, and to receive the revenue from certain third party events in Hudson Boulevard Park, Manhattan ("Licensed Premises").

Such concessions will include a food concession at the existing kiosk building and seating area; mobile food trucks and/or carts; farmers markets and winter holiday markets that do not materially displace other public park uses and are limited in duration to a few weeks per year (or, in the case of farmers markets, a few days per week), and other such similar uses as may be approved in advance by Parks. Under the License Agreement, Parks also grants to HY/HK BID the right to receive the fees generated by certain third party events (no more than 12 times per year and twice per month).

***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 term of this License Agreement shall commence upon Parks' giving written Notice to Proceed to Licensee and, unless terminated sooner in accordance with this Agreement, shall terminate ten (10) years from the date of execution of the M&O Agreement (which is August 15, 2025), or the last day of any subsequent renewal periods that are exercised pursuant to this Agreement. This Agreement may be renewed for two (2) additional five (5)-year periods, upon the agreement of Parks and HY/HK BID, provided that Parks has renewed the M&O Agreement for the same periods. In no event will the total length of the term, including any renewal periods, exceed the shorter of (i) seventeen (17) years; or (ii) the term of the M&O Agreement, including any renewal periods.

In lieu of a license fee, HY/HK BID will use all gross receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Hudson Boulevard Park, in accordance with the terms of the M&O Agreement and as otherwise set forth in this License Agreement.

**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:**

HY/HK BID, a not-for-profit organization, was formed in 2013 to provide maintenance for the emerging Hudson Boulevard Park, as well as district-wide services and improvements that enhance the quality of life of an exceptionally diverse population who lives, works and visits within the far west side of Manhattan. The

area that HY/HK BID is responsible for is broadly bounded by West 42nd Street to the north, 11th Avenue to the west, West 30th Street to the south, and 9th Avenue to the east.

Hudson Boulevard Park is approximately four acres of open space running between 10th and 11th Avenues, from West 33rd to West 39th Streets. The first, completed phase of Hudson Boulevard Park is situated between 10th and 11th Avenues from West 33rd to West 36th Street, with open areas for public events, grassy expanses, and quiet seating areas. The Park includes two entrances to the newly expanded 7 Subway line, offering residents with convenient access to public transportation. The second, yet-to-be built phase of Hudson Boulevard Park will be situated between 10th and 11th Avenues from West 36th to West 39th Street.

Pursuant to a License Agreement ("M&O Agreement") with the NYC Parks Department, which was signed on August 12, 2015, HY/HK BID is responsible for the maintenance and operations of Hudson Boulevard Park including, but not limited to, cleaning (including graffiti removal), landscaping, horticulture, snow removal, water feature maintenance, and repairs. The exact terms of HY/HK BID's maintenance and operational responsibilities are detailed in the M&O Agreement.

It is anticipated that the Sole Source License Agreement ("License Agreement") with HY/HK BID will allow HY/HK BID to offset the cost of its maintenance and operational responsibilities under the Agreement in part by providing for the operation of various food concessions, farmers and winter holiday markets, and to receive the revenue from certain third party events in Hudson Boulevard Park, Manhattan. Such concessions will include a food concession at the existing kiosk building and seating area; mobile food trucks and/or carts; farmers markets and winter holiday markets that do not materially displace other public park uses and are limited in duration to a few weeks per year (or, in the case of farmers markets, a few days per week), and other such similar uses as may be approved in advance by Parks. Under the Agreement, Parks also grants to HY/HK BID the right to receive the fees generated by certain third party events (no more than 12 times per year and twice per month).

Given HY/HK BID's commitment to maintaining and improving Hudson Boulevard Park, Parks believes that it is in the best interest of the City to enter into a Sole Source License Agreement with HY/HK BID.

**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 05/25/2018, 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 05/25/2018, 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 05/25/2018.

- New York Post, a NYC citywide newspaper on 05/31/2018 and 06/07/2018.
- West Side Spirit, a NYC local newspaper published in the affected borough(s) on 06/07/2018.
- Our Town, a NYC local newspaper published in the affected borough(s) on 06/07/2018.

## **2. Public Hearing Date, Exception to Public Hearing Requirement**

- A Public Hearing was conducted on 06/11/2018.

**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.



NYC Parks

Mitchell J. Silver, FAICP  
Commissioner

City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## MEMORANDUM

**TO:** Hon. Gale Brewer, President of the Borough of Manhattan  
Jesse Bodine, District Manager, Manhattan Community Board 5

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

**SUBJECT:** Notice of Joint Public Hearing, June 11, 2018: Intent to award as a concession the operation of various food concessions, farmers and winter holiday markets and to receive the revenue from certain third party events in Hudson Boulevard Park, Manhattan, to the Hudson Yards/Hell's Kitchen Business Improvement District, Inc.

**DATE:** May 25, 2018

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation to be held on Monday, June 11, 2018 at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession the operation of various food concessions, farmer's and winter holiday markets and to receive revenue from certain third-party events in Hudson Boulevard Park, Manhattan, for a potential seventeen (17) year term, to the Hudson Yards/Hell's Kitchen Business Improvement District, Inc. ("HY/HK BID"). Such concessions will include a food concession at the existing kiosk building and seating area; mobile food trucks and/or carts; farmer's markets and winter holiday markets that do not materially displace other public park uses and are limited in duration to a few weeks per year (or, in the case of farmer's markets, a few days per week), and other such similar uses as may be approved in advance by Parks. Under the License Agreement, Parks also grants to HY/HK BID the right to receive the fees generated by certain third party events (no more than 12 times per year and twice per month).

In lieu of a license fee, HY/HK BID will use all gross receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Hudson Boulevard Park, in accordance with the terms of the M&O Agreement (as defined in the License Agreement), and as otherwise set forth in this License Agreement.

LOCATION: A draft copy of the License Agreement may be reviewed or obtained at no cost, commencing on Monday, June 4, 2018 through Monday, June 11, 2018, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the NYC Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

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

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

LICENSE AGREEMENT

BETWEEN

HUDSON YARDS/HELL'S KITCHEN BUSINESS IMPROVEMENT DISTRICT, INC.

AND

CITY OF NEW YORK  
DEPARTMENT OF  
PARKS & RECREATION

*for*

The operation of various food concessions, farmers and winter holiday markets for the accommodation, enjoyment, and convenience of the public, and for Licensee to receive revenue from certain Third Party Events in Hudson Boulevard Park in order to support the Park

Manhattan

M399-O

DATED: \_\_\_\_\_, 2018

I. GRANT OF LICENSE.....	2
II. DEFINITIONS .....	6
III. TERM OF LICENSE .....	9
IV. GROSS RECEIPTS.....	12
V. RIGHT TO AUDIT .....	14
VI. PARKS SPECIAL EVENTS.....	15
VII. ALTERATIONS .....	15
VIII. FIXED AND EXPENDABLE EQUIPMENT .....	17
IX. UTILITIES .....	18
X. OPERATIONS .....	18
XI. MAINTENANCE, SANITATION AND REPAIRS .....	25
XII. APPROVALS.....	27
XIII. PARKS EVENTS.....	27
XIV. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES ...	28
XV. PARKS CONSTRUCTION .....	29
XVI. COMPLIANCE WITH LAWS .....	29
XVII. NON-DISCRIMINATION.....	29
XVIII. NO WAIVER OF RIGHTS.....	29
XIX. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION.....	30
XX. INSURANCE .....	32
XXI. WAIVER OF COMPENSATION .....	36
XXII. INVESTIGATIONS.....	37
XXIII. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE .....	39
XXIV. WAIVER OF TRIAL BY JURY .....	40
XXV. CUMULATIVE REMEDIES - NO WAIVER .....	40
XXVI. EMPLOYEES.....	40
XXVII. BACKGROUND CHECKS .....	40
XXVIII. INDEPENDENT STATUS OF LICENSEE .....	42
XXIX. INTENTIONALLY OMITTED .....	42
XXX. CONFLICT OF INTEREST .....	42
XXXI. PROCUREMENT OF AGREEMENT.....	43
XXXII. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES .....	43
XXXIII. ALL LEGAL PROVISIONS DEEMED INCLUDED.....	43
XXXIV. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS .....	43
XXXV. JUDICIAL INTERPRETATION .....	44
XXXVI. MODIFICATION OF AGREEMENT .....	44
XXXVII. NOTICES.....	44
XXXVIII. LICENSEE ORGANIZATION, POWER AND AUTHORITY.....	44

LICENSE AGREEMENT (“License” or “License Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065, and the Hudson Yards/Hell’s Kitchen Business Improvement District, Inc. (“HY/HK BID” or “Licensee”), a New York not-for-profit corporation (collectively, the “Parties”).

**WHEREAS**, pursuant to Section 531 of the New York City Charter, Parks was created, the head of which was designated as the Commissioner of Parks and Recreation (“Commissioner”); and

**WHEREAS**, Parks is charged with the duty to manage, maintain and operate City parks and recreation facilities pursuant to Section 533 of the New York City Charter; and

**WHEREAS**, the City desires to encourage the participation of interested not-for-profit entities in providing services, including park maintenance and management and recreational programs, for the benefit of the public; and

**WHEREAS**, Hudson Boulevard Park (“Hudson Blvd Park”, “Hudson Boulevard Park” or “Park”) was constructed with funds raised by bonds issued by the Hudson Yards Development Corporation (“HYDC”) and is currently under the jurisdiction of Parks; and

**WHEREAS**, in developing the plans for the Park and related zoning amendments in 2004 and 2005 (“2005 Plan”) for the Hudson Yards neighborhood of Manhattan, the City anticipated that Hudson Boulevard Park would be maintained by a private, nonprofit entity; and

**WHEREAS**, the City Planning Commission certified its unqualified approval of the district plan for the Hudson Yards Business Improvement District (“Hudson Yards BID”) on September 30, 2013 (Application N140038 BDM) and stated: “The creation of a major park and Boulevard is a significant initiative stemming from the 2005 Plan. Hudson Yards BID will be a critical stakeholder in the future as it will be the entity responsible for maintaining the newly created Hudson Boulevard Park under a contract with the Department of Parks and Recreation.”; and

**WHEREAS**, the City Council enacted an amendment to the Administrative Code of the City of New York, in relation to the establishment of the Hudson Yards BID on December 30, 2013; and

**WHEREAS**, HY/HK BID is the district management association for the Hudson Yards BID;

**WHEREAS**, on August 12, 2015, Parks and HY/HK BID entered into a license agreement with Parks whereby HK/HY BID assumed responsibility for the maintenance and operation of Hudson Boulevard Park, including, but not limited to the cleaning, landscaping, horticulture, snow removal, water feature and repairs (the “M&O Agreement”; copy attached as Exhibit “G”); and

**WHEREAS**, the Commissioner now seeks to provide for the operation of various food concessions, farmers and winter holiday markets for the accommodation, enjoyment, and convenience of the public, and for Licensee to receive revenue from certain Third Party Events in Hudson Boulevard Park in order to support the Park; and

**WHEREAS**, Licensee seeks to operate or issue sublicenses for the operation of various food concessions, farmer's markets and winter holiday markets for the accommodation, enjoyment, and convenience of the public, and to receive the revenue from certain Third Party Events in Hudson Boulevard Park in order to support the Park, in accordance with the terms set forth herein; and

**WHEREAS**, Parks and HY/HK BID, upon approval from the Franchise and Concession Review Committee ("FCRC"), seek to enter into this sole source License Agreement addressing rights and obligations with respect to the operation of various food concessions, farmer's markets and winter holiday markets and Third Party Events in Hudson Boulevard Park; and

**WHEREAS**, the M&O Agreement will continue to govern the terms of Licensee's maintenance and operation of the Park while this Agreement shall govern the terms of Licensee concessions at the Park, except that in the event of conflict between terms of the M&O Agreement and this Agreement, then the terms of this Agreement shall control.

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

## **I. GRANT OF LICENSE**

**1.1 (a) (1)** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to operate, or to grant sublicenses to third parties to operate, the following concessions in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner:

(i) food kiosk building and seating area (the "Kiosk");

(ii) food trucks and/or carts ("Mobile Food Units") throughout the year throughout Hudson Boulevard Park at such locations as shall be reasonably approved in advance in writing by Parks. The design and dimensions of the Mobile Food Units is subject to Parks' reasonable prior written approval;

(iii) Farmer's markets and winter holiday markets that do not materially displace other public park uses and are limited in duration to a few weeks per year (or, in the case of farmer's markets, a few days per week) as shall be reasonably approved in advance in writing by Parks;

(iv) other such similar uses as may be approved in advance by Parks; and

(v) Parks also hereby grants to Licensee the right to receive the fees generated by Third Party Events (as hereinafter defined) (no more than 12 times per year and twice

per month).

(2) All plans, schedules, services, menu items, merchandise, rates, fees and prices, and hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. In addition to any obligation in the M&O Agreement, Licensee is responsible for all costs associated with the operation and maintenance of the Licensed Premises.

(3) There are presently no permits issued by Parks to licensees other than Licensee to operate Mobile Food Units in the Park.

(b) Licensee may, subject to the prior written approval of Parks, enter into sublicense agreements ("Sublicense Agreements") with third parties ("Sublicensees") with respect to the activities set forth in Sections 1.1(a)(1)(i) through (iv) above in accordance with the terms and conditions set forth herein. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. Two (2) copies of any proposed Sublicense Agreement shall be submitted to Parks with Licensee's written request for approval.

(i) Any Sublicense Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require said Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same.

(ii) Licensee shall require said Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this Agreement and indemnifying the City as set forth in Paragraphs 19 and 20 herein.

(iii) No Sublicense Agreement may be assigned without the prior written consent of Parks. Any subsequent Sublicense Agreement(s) will be subject to the terms and conditions as set forth in this License.

(iv) If any Sublicensee does not comply with this License, such Sublicensee's operations shall be terminated by Licensee upon direction of Parks.

(c) In selecting a Sublicensee for Parks' approval, Licensee shall issue a solicitation in the basic form of a request for proposals ("RFP") with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee in accordance with Parks' usual procedures and requirements and subject to Parks' approval. Parks disapproval of any successful proposer shall be deemed reasonable if the successful proposer fails the background check.

**1.2** Licensee shall 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 to operate at the Licensed Premises in accordance with the terms of this License. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained

herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason.

**1.3** It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with in all material respects (subject to applicable notice and cure periods) and so long as this License is not terminated by Commissioner.

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement.

**1.5** Licensee may use such name in its operations at the Licensed Premises as shall be approved in advance in writing by Parks. Parks may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with Parks' property. The City is the owner of the designation and trademark "Hudson Boulevard Park" and variations thereof, and all other designations and trademarks of Parks, including Parks signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications.

**1.6** (i) Except as set forth in subparagraph (ii) below, all intellectual property rights in the Park name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Park and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-profit activities, Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of the Park. To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit the Park. Upon Parks' request, Licensee shall provide Parks with an accounting reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP

(whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (i). Nothing in this subparagraph (i) prohibits Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from using the words “Hudson Boulevard Park” as part of the business address thereof or in the ordinary course of business thereof, and nothing in this subparagraph (i) requires Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from obtaining permission from Parks to use the words “Hudson Boulevard Park” as provided in this sentence; provided, however, that Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee specifically acknowledge that the Hudson Boulevard Park name or words as described in this subparagraph (i) are included within the definition of City IP and no permitted use by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall immediately terminate when such person ceases to operate in the Park.

(ii) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements (“Licensee Specific IP”) are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee, any Sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in subparagraph (i) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee’s activities, as shall Licensee’s ability to use any City IP that is incorporated into Licensee Specific IP with the City’s permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee’s activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

(iii) All goodwill associated with the City IP or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names, and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner which could be inconsistent with or damaging to the owner’s name

and reputation. Either party shall have the right to terminate this Agreement, upon written notice, in the event that any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. In the event that any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, prior to exercising the right of termination provided for in this paragraph, shall provide notice to the other party and following receipt of such notice sent by the owner, the other party shall promptly cease and halt all such uses.

(A) During the Term of this License Agreement, each party may make only the uses described in subparagraphs (i) and (ii) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City, nor Licensee shall acquire any rights in the Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(B) The parties will not use the name or logos of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed.

(C) All provisions of this section will survive any expiration or termination of this License Agreement, except as otherwise set forth in this section.

## II. DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

- (a) "Alteration" shall mean (excepting ordinary repair and maintenance):
  - (i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or
  - (ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of the Licensed Premises.
- (b) Intentionally omitted.
- (c) "City" shall mean the City of New York, its departments and political subdivisions.
- (d) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.
- (e) "Comptroller" shall mean the Comptroller of the City of New York.
- (f) Intentionally omitted.

(g) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Additional Fixed Equipment provided by Licensee.

(h) Intentionally omitted.

(i) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

(ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(j) (i) "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Licensee, and any Sublicensee, from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee or any Sublicensee, as against Licensee or any Sublicensee's sales. Gross Receipts shall include any funds received for orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, and shall include all receipts of Licensee or any Sublicensee for orders taken at the Licensed Premises by Licensee or any Sublicensee for services to be rendered by Licensee or any Sublicensee in the future either at or outside of the Licensed Premises. For example, if Licensee or any Sublicensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities. Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized Sublicense or subcontract agreement, as provided in Section 1.1(b), provided that Gross Receipts shall also include Licensee's income from Sublicense Agreements or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or Sublicensees. Gross Receipts shall further include all fees received by Licensee in connection with Third Party Events.

(iii) Only Licensee's net receipts from vending machines shall be included in Gross Receipts.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are

paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee or any Sublicensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any Sublicensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

**(a)** With respect to non-catered food and beverages service, a “Gratuity” shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee’s or any Sublicensee’s customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any Sublicensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law Section 652(4). Upon Parks’ request Licensee shall provide, and shall cause any Sublicensee to provide, documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee or any Sublicensee, as applicable. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

**(b)** With respect to catered events, a “Gratuity” shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s or any Sublicensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee or any Sublicensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Upon Parks’ request Licensee shall provide, and shall cause any Sublicensee to provide, documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee or Sublicensee, as applicable.

(v) Intentionally omitted.

(vi) Notwithstanding anything to the contrary herein, Gross Receipts shall not include deposits made with Licensee for damage to the Licensed Premises unless and to the extent that Licensee retains such deposits for damage actually incurred.

Notwithstanding anything set forth in this Section 2.1(j), Licensee shall comply, and shall cause Sublicensee to comply, with all applicable laws, rules, and regulations, including but not limited to City, State, and federal labor laws.

**(k)** “Licensed Premises” or “Premises” shall mean:

- (1) The location designated as the Kiosk and seating area on Exhibit A attached hereto.
- (2) The actual physical space occupied by Mobile Food Units at the locations approved by Parks for the operation of Mobile Food Units.
- (3) Any location within the Park that is approved for use in connection with the activities set forth Section 1.1(a)(1) above during the time in which such use occurs.

(l) “Licensee’s Gross Receipts” shall mean the Gross Receipts received by Licensee, but expressly excluding Gross Receipts received only by any Sublicensee

(m) “Sublicensee’s Gross Receipts” shall mean the Gross Receipts received only by any Sublicensee, but not received by Licensee.

(n) “Third Party Events” shall mean any event to be held in Hudson Boulevard Park operated or sponsored by third parties for which Parks has issued a permit and charged a fee pursuant to 56 RCNY §§ 2-08 and 2-10. All fees charged by Parks for Third Party Events shall be paid to Licensee. Parks will draft and negotiate such permits in consultation with the HY/HK BID. Third Party Events shall be limited to no more than 12 times per year and twice per month. Third Party Events that are closed to the public shall not close more than one block of the Park at a time, unless otherwise agreed to in writing by Parks, or when another phase of the Park is constructed, not more than two blocks of the Park. Parks will consult with HY/HK BID on any Third Party Event applications. Licensee agrees to work with Parks to, coordinate Third Party Events with other activities in Hudson Boulevard Park and provide on-site supervision of the production and logistics associated with Third Party Events ensuring compliance with the terms of event permits.

(o) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year, except that the final Year of the Term (as hereinafter defined) of the License Agreement shall end on the Expiration Date (as hereinafter defined). Notwithstanding the foregoing, the first Year or Operating Year shall run from the Commencement Date to the next succeeding June 30, and the last Year or Operating Year shall run from the last July 1 during the Term to the Termination Date.

### **III. TERM OF LICENSE**

**3.1** This License shall become effective upon Parks giving written notice to proceed to Licensee (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate ten (10) years from the date of execution of the M&O Agreement (which is August 15, 2025) or the last day of any subsequent renewal periods that are exercised pursuant to this License (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term”. This License may be renewed for two (2) additional five (5) year terms, upon the agreement of the Parties, provided that Parks has renewed the M&O

Agreement for the same periods. Notwithstanding the foregoing, in no event will the total length of the Term, including any renewal periods, exceed the shorter of (i) seventeen (17) years or (ii) the term of the M&O Agreement, including any renewal periods.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

**3.3** Parks may terminate this License for cause as follows:

Should Licensee or any Sublicensee breach or fail to comply in any material respect with any of the provisions of this License or fail to comply in any respect with any Federal, State or local law, rule, regulation or order affecting the License, such Sublicensee, or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If such breach or failure arises from the acts or omissions of a Sublicensee, as reasonably determined by Commissioner, the cure period shall be reasonably extended by Commissioner beyond such thirty (30) days (not to exceed an additional 30 days) to give Licensee time to induce such Sublicensee to comply with such breach or failure or, if such Sublicensee fails to remedy such breach or failure in a timely manner, for Licensee to terminate the applicable Sublicense Agreement and regain possession of the Sublicensed Premises. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

**(b)** The following shall constitute events of default for which this License may be terminated on one (1) day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

**(c)** Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

**3.4** Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein, and/or of any Sublicensee herein, shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City.

**3.5** In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 above, any property of the Licensee or any Sublicensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

**3.6** Licensee may terminate this License upon one (1) year's notice to Parks. If Licensee terminates this License, then Parks shall have the right but not the obligation to operate concessions at the Licensed Premises, or to issue a license to operate concessions at the Licensed Premises to a third party.

**3.7** Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations and cause any Sublicensee to cease all operations pursuant to this License and shall vacate and cause any Sublicensee to vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Premises.

**3.8** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises and cause any Sublicensee to remove all personal possessions from the Premises unless such property is held by the Commissioner pursuant to Section 3.5. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned unless such property is held by the Commissioner pursuant to Section 3.5. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement.

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

**3.10** If this License is terminated as provided in Section 3.3 hereof:

(a) Parks may complete all repair, maintenance and construction work required to be performed by Licensee or Sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee or any Sublicensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or

any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee or any Sublicensee of any liability under this License Agreement or to otherwise affect any such liability.

**3.11** No receipt of moneys by Parks from Licensee or any Sublicensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's or any Sublicensee's liability hereunder.

**3.12** In the event this License Agreement is terminated, Parks will not reimburse Licensee's or any Sublicensee's unamortized capital improvement cost.

#### **IV. GROSS RECEIPTS**

**4.1** In lieu of a license fee, Licensee will use all Gross Receipts received by it from or in connection with its operations at the Licensed Premises exclusively to provide for the management, maintenance, operation and programming of Hudson Boulevard Park, in accordance with the terms of the M&O Agreement and as otherwise set forth in this License. Licensee shall submit such reports to Parks and permit Parks such audit of its books and records as Parks shall reasonably require to assure that such Gross Receipts are so used. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at Hudson Boulevard Park.

**4.2** Intentionally omitted.

**4.3** Reports:

(a) **Annual Report.** No later than October 31st each year, in a form that complies with the report attached as Exhibit B to this License Agreement, Licensee shall prepare a report of data concerning all funds that Licensee has generated and expended at Hudson Boulevard Park for the preceding period of July 1st to June 30<sup>th</sup>. On or before the sixtieth (60<sup>th</sup>) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement (on an accrual basis) pertaining to operations under this License, signed and verified by an officer of Licensee, including a detailed income and expense statement signed and verified by an officer of the Sublicensee, if any, pertaining to operations at that location. The statements shall be in a format approved by Parks. Neither Parks nor the City may disclose to any third party any documents or information with respect to Licensee's income or expenses in

connection with its operations at the Licensed Premises, except to the extent otherwise required by court order or applicable law (including “freedom of information” laws and Local Law 28 of 2008, NYC Admin Code Sec. 18-134). For the avoidance of doubt, this prior sentence shall not apply to the Comptroller or any other authorized auditor nor prevent disclosure by the Comptroller or any other authorized auditor of any information derived from audits of this License Agreement.

(b) **Monthly Report.** On or before the thirtieth (30<sup>th</sup>) day following the end of each month of each Operating Year, Licensee shall submit to Parks a statement of Licensee’s Gross Receipts, in a form satisfactory to Parks, signed and verified by an officer of Licensee reporting any Gross Receipts generated by Licensee under this License Agreement. Such statement shall indicate whether or not these amounts are inclusive of sales tax collected. Licensee shall also submit to Parks, in a form satisfactory to Parks, a statement of Sublicensee’s Gross Receipts from each Sublicensee, signed and verified by an officer of such Sublicensee, reporting such Sublicensee’s Gross Receipts generated from operations under this License Agreement. Licensee shall cause each such Sublicensee to indicate on its statement of Sublicensee’s Gross Receipts whether or not such Sublicensee’s Gross Receipts are inclusive of sales tax collected.

(c) **Events Report.** Within 60 days after the end of each Operating Year upon request by Parks, Licensee shall submit to Parks an income and expense statement in a form satisfactory to Parks, signed and verified by an officer of each intermediary/producer which receives income from arranging or producing events at the Licensed Premises, setting forth the income and expenses of each such intermediary from its activities at the Licensed Premises.

(d) Intentionally omitted.

(e) Intentionally omitted.

#### 4.4 Accounting Procedures.

(a) Licensee, during the Term of this License, shall maintain, and shall cause any Sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, with respect to the Kiosk at the Park, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Licensee shall also establish a dedicated bank account for all deposits related to this concession’s generated revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises;; and duplicate bank deposit slips and bank statements.

(b) Licensee shall, and shall cause any Sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee 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 the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

**4.5 Taxes.** Licensee is, and shall cause any Sublicensee to be, solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License.

**4.6 Breach.**

(a) In the event Parks reasonably determines that Licensee or Licensee's employees, agents, Sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 and 4.3 through 4.5 hereinabove, Licensee may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

(b) The failure or refusal of the Licensee to, or to cause any Sublicensee to, furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article 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 Parks, at its option, to terminate this License.

**V. RIGHT TO AUDIT**

**5.1** Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any Sublicensee to verify compliance with this License Agreement and/or Gross Receipts as reported by the Licensee. Licensee shall, and shall cause any Sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any Sublicensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any Sublicensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such Sublicensee must pay the food, board and travel costs incidental to two auditors conducting such

examination or audit at said location. Audits by Parks will be performed in a manner that will not unreasonably interrupt the operation of the business at the Licensed Premises.

**5.2** The failure or refusal of the Licensee to, or cause any Sublicensee to, permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's or any Sublicensee's records, books of account and data or the interference in any way by the Licensee or any Sublicensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods pursuant to Section 3.3(a) hereof.

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

## **VI. PARKS SPECIAL EVENTS**

**6.1** For the purposes of this Section 6 the term "Parks' Special Event(s)" shall mean any Special Event at the Licensed Premises sponsored by Parks. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use of the Licensed Premises or any portion thereof. For each Parks Special Event, Parks shall comply with the following conditions: (a) Parks shall give Licensee not less than thirty (30) days (or such lesser period as agreed by the parties) advance notice of any Parks' Special Event, and any annual event will be on a date mutually agreed to by Parks and Licensee, (b) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event Permit and such Special Event Permit has been approved by Parks, (c) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee for such maintenance and clean-up, and (d) each Sublicensee, in its own discretion, may elect to operate or not to operate during any Parks' Special Event. Subject to the foregoing conditions, Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with Parks' Special Events. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee or any Sublicensee from reasonable access to the Licensed Premises. Furthermore, Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of Parks' Rules and Regulations at the Licensed Premises where appropriate under Parks' Rules and Regulations and where such Demonstrations do not unreasonably interfere with previously scheduled and Parks-approved Licensee's Special Events as reasonably determined by Parks.

## **VII. ALTERATIONS**

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

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

(i) Obtain Commissioner's written approval (which shall not be unreasonably withheld or delayed) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(ii) insure that work performed and alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time;

(iii) notify Commissioner of completion of, and the making final payment for, any alteration within ten days after the occurrence of said completion or final payment; and

(iv) comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for review of any proposed Alteration constituting a landscape redesign, renovation, and rehabilitation project in the Licensed Premises.

(c) Commissioner may, in his discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect. Parks shall use reasonable efforts to give Licensee at least fourteen days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks shall use its reasonable efforts to perform such work in a way which minimizes interference with Licensee's operations at the Licensed Premises.

(d) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. Also, for purposes of this provision, "Capital Improvements" shall mean all construction, reconstruction, renovations or Alterations of or to the Licensed Premises governed by this License Agreement.

(e) All Alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, Sublicensees or contractors shall be at the Licensee's (or its Sublicensee's) sole cost and expense (other than any agreed contribution from the City or Parks, and contributions from other public or private sector partners or donors) and such work shall not commence until the Licensee obtains written approval from the Commissioner, or his designee as well as any City or other governmental authorizations and approvals that may be necessary.

## VIII. FIXED AND EXPENDABLE EQUIPMENT

**8.1** Subject to the provisions of Article X hereof, Licensee shall, at its sole cost and expense or through any Sublicensee and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment and materials necessary for the successful operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

**8.2** City has title to all Fixed Equipment on the Premises as of the Commencement Date. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of Commissioner, to remove such equipment and restore the Licensed Premises to Parks in a condition no worse than at the commencement of the Term.

**8.3** Licensee shall supply at its own cost and expense or through any Sublicensee all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment which the Commissioner reasonably determines is necessary to the operation of this License.

**8.4** Licensee shall, and cause any Sublicensee to, acquire, replace or repair, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by Commissioner.

**8.5** Title to all Expendable Equipment obtained by Licensee or any Sublicensee shall remain in Licensee or such Sublicensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

**8.6** Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is."

**8.7** The equipment to be removed by Licensee pursuant to this License Agreement shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

## **IX. UTILITIES**

**9.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises or that any entity can or will make such service available. Licensee shall, and shall cause any Sublicensee to, connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with the appropriate service providers. Licensee and Sublicensee at their sole cost will be required to pay for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that the City's Department of Environmental Protection ("DEP") assesses for water usage. Licensee shall, and shall any Sublicensee to, adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **X. OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, in addition to any obligation in the M&O Agreement, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate at the Licensed Premises as set forth herein and only when the park in which the Licensed Premises is located is open. All hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. All services, menu items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License must also be approved in advance in writing by Parks which shall not be unreasonably withheld or delayed. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the License Agreement.

**(b)** Licensee shall, and shall cause any Sublicensee to, comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises.

**(c)** Licensee must provide or cause any Sublicensee to provide all equipment necessary for the successful operation of the concessions granted hereby.

**(d)** Licensee shall operate and maintain a properly licensed and amply stocked Kiosk on a seasonal basis approved by Parks. Such Kiosk must be of a high standard of quality. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages.

**(e)** Licensee acknowledges that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee will be required to purchase

merchandise from authorized licensees of the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement.

**(f)** The selling and/or advertisement of cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking product at the Licensed Premises is strictly prohibited. Licensee shall adhere to and enforce this policy and shall cause any Sublicensee to adhere to this policy.

**(g)** The sale and/or service of alcohol at the Licensed Premises is strictly prohibited without the prior written approval of Parks and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served by Licensee in areas designated by Parks. All efforts must be made by Licensee to keep alcohol consumption discrete. Licensee must keep in mind that the Licensed Premises are in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

**(h)** Any staff assigned by Licensee to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate Department of Health and Mental Hygiene (“DOHMH”) permits. Licensee may only provide food service at the Licensed Premises if it has obtained the appropriate, valid permits and authorizations required by DOHMH. At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler’s license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise.

**(i)** With respect to the Mobile Food Unit(s), Licensee shall obtain a DOHMH Vendor License for each person designated as an operator of a Mobile Food Unit and a DOHMH Mobile Food Vending Unit Permit for its Mobile Food Unit(s). Licensee must submit both a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit to Parks before the operation of Mobile Food Unit(s) can commence. During the License Term, if Licensee operates a Mobile Food Unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Licensee will be instructed to cease operations and will be subject to fines. When warranted and pursuant to law, ordinance or regulation, Officers of the Parks Enforcement Police (PEP), New York City Police Department, New York Fire Department and DOHMH may confiscate the Mobile Food Unit(s), including merchandise.

**(j)** Subject to Parks approval, Licensee may install or have installed vending machines for snack and beverage service. In the event that Licensee places vending machines at the Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as Exhibits C-1 and C-2 respectively. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and/or food standards may be changed during the Term of the License. In the event that Licensee installs vending machines, Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of

all vending machines at the Premises. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on Licensee's costs, upon submission to Parks of documentation satisfactory to Parks demonstrating such effect, Licensee and Parks may amend this License as agreed between Parks and Licensee.

**10.2** At the Kiosk Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices.

**10.3 (a)** Smoking and the use of electronic cigarettes anywhere on the Licensed Premises is strictly prohibited.

**(b)** Additionally, Licensee shall not use, and shall cause any Sublicensee not to use, in its operations any polystyrene packaging or food containers.

**(c)** Licensee is prohibited, and shall prohibit any Sublicensee, from selling any beverages in glass bottles. All beverages shall be in non-glass, shatter-proof containers.

**(d)** Licensee shall, and shall cause any Sublicensee to, adhere to and enforce the prohibitions contained in this Section 10.3.

**10.4** Licensee, at its sole cost and expense or through any Sublicensee, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall, and shall cause any Sublicensee to, operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee shall, and shall cause any Sublicensee to, at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall, and shall cause any Sublicensee to, obtain a "Letter of No Objection" from the Department of Buildings ("DOB"). Furthermore, in the event that, at the Commencement Date, or at any time during the Term, the Licensee does not have a Certificate of Occupancy, where required; and does not have a "Letter of No Objection". Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall, and shall cause any Sublicensee to, obtain any necessary licenses and permits for such temporary structures before the commencement of operations hereunder.

**10.5** Licensee warrants that all merchandise, food, beverages, and services of any kind sold or rented pursuant to this License shall be of a high quality. Licensee shall, and shall cause any Sublicensee to, operate in such a manner as to maintain a very high health inspection rating.

**10.6** RESERVED.

**10.7** An officer or member of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of the Licensee or manager must be

available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or Sublicensee whenever reasonably requested by Commissioner.

**10.8** Licensee shall, and shall cause any Sublicensee to, provide equipment which will provide security for all monies received. Licensee shall, and shall cause any Sublicensee to, provide for the transfer of all monies collected to the banking institution of Licensee or any Sublicensee, as applicable. Licensee shall, and shall cause any Sublicensee to, bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

**10.9** Licensee shall, and shall cause any Sublicensee to, 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:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

**10.10** Licensee must, and shall require any Sublicensee to, provide Americans with Disabilities Act (“ADA”) accessibility throughout the Licensed Premises. Licensee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Licensee shall, and shall cause any Sublicensee to, also comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall, and shall cause any Sublicensee to, include in its advertising and promotion program, described in Section 10.15 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

**10.11** Pursuant to a plan approved by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises during the Term and shall provide for a twenty-four hour per day security system, which might include a security camera, at the Licensed Premises in accordance with plans that have received the prior written approval of Parks which shall not be unreasonably withheld or delayed. Licensee shall secure the Licensed Premises and any equipment every evening before closing for the day during the Term.

**10.12** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee or any Sublicensee with respect to the Licensed Premises. Licensee shall also

designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

**10.13** Licensee shall promptly notify Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

**10.14** Licensee shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department. Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of same.

**10.15** Licensee and any Sublicensee may establish an advertising and promotion program, subject to Parks prior written approval, which will not be unreasonably withheld or delayed. Licensee and any Sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks, or the City of New York. Licensee and any Sublicensee may release news items to the media as it sees fit. If the Commissioner in his reasonable discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall, and shall cause any Sublicensee to, cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior reasonable approval as to design and distribution of all advertising and promotional materials.

**10.16** The design, placement and content of all signage, including signage which includes Licensee's or any Sublicensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall, and shall cause any Sublicensee to, not advertise any product brands without Parks' prior written approval. Licensee is, and shall cause any Sublicensee to be, prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display or placement of tobacco or electronic cigarette or non-tobacco smoking product advertising shall be prohibited. The advertising of alcoholic beverages shall not be permitted, but Licensee and any Sublicensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. The following standards will apply to any allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Licensee shall, and shall cause any Sublicensee to, immediately remove any prohibited material displayed or placed upon notice from Parks at Licensee's sole cost and expense.

**10.17** Licensee shall, and shall cause any Sublicensee to, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities, subject to the prior written approval of Parks. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee or any Sublicensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee or any Sublicensee shall be responsible for obtaining 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, whether on or off Parks' property, are subject to Commissioner's prior written approval which shall not be unreasonably withheld or delayed.

**10.18** Licensee shall, and shall cause any Sublicensee to, obtain the prior written approval of Parks prior to entering into any marketing or sponsorship agreement. In the event Licensee or Sublicensee breaches this provision, Licensee shall or shall cause its Sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interests.

**10.19** Should Commissioner reasonably determine that Licensee or any Sublicensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to, or cause its Sublicensee to, improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within the reasonable timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

**10.20** Should Commissioner, in Commissioner's sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

**10.21** Licensee shall not, and shall cause any Sublicensee to not, use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

**10.22** Licensee shall, and shall cause any Sublicensee, operate the Licensed Premises in accordance with all applicable FDNY Codes.

**10.23** Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, should

Licensee or any Sublicensee fail to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct or cause to be corrected such shortcomings within the time frame set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess Licensee as liquidated damages payable to Parks Five Hundred (\$500.00) Dollars per day with respect to each violation of the License, until the shortcomings have been corrected.

If an assessment is received for a violation, there is a process by which the assessment may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

1. Filing an Appeal

- A. If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc.) should also be included.
- B. If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

2. Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.
- B. The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

**10.24** Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages licensees to report illegal vendors by calling 311.

**10.25** Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense or through any Sublicensee, will be responsible for the storage of all equipment and personal property. Licensee shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession granted hereby. Licensee shall not, and shall cause any Sublicensee to not, store any equipment or

supplies at the Licensed Premises without the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval which shall not be unreasonably withheld or delayed. Licensee will be required to secure all outdoor equipment, if any, on a nightly basis and anytime the concession granted hereby is closed.

**10.26** Intentionally omitted.

**10.27** Licensee shall, and shall cause any Sublicensee to, have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concessions granted hereby. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks which shall not be unreasonably withheld or delayed.

**10.28** Licensee shall, and shall cause any Sublicensee to, comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for music or music programming. Licensee and any Sublicensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved by Parks which shall not be unreasonably withheld or delayed. A cabaret license will be strictly prohibited at the Licensed Premises.

**10.29** Licensee shall, and shall cause any Sublicensee to, comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a licensee of the City of New York as set forth in the Paid Sick Leave Law Concession Rider annexed hereto as Exhibit D.

## **XI. MAINTENANCE, SANITATION AND REPAIRS**

**11.1** Licensee shall, in addition to any obligation in the M&O Agreement, at its sole cost and expense (or through arrangements with third parties), operate and maintain the Premises in good and safe condition and in accordance with industry standards during the Term. This includes, but is not limited to, the maintenance of and the making of all necessary repairs to the Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, restrooms (including the stocking of supplies), equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures during the Term. In addition, all signs and structures at the Kiosk at the Premises must be kept in good condition and free of graffiti.

**11.2** During the Term, Licensee shall perform its maintenance duties under this License Agreement to the reasonable satisfaction of Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner."

**11.3** At Parks' request during the Term, upon reasonable prior written notice Licensee shall conduct site inspections at the Licensed Premises with a representative of Parks. Such inspections shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs, if any, to be performed

by Licensee. Licensee shall make all necessary repairs in accordance with Section 11.1 during the Term.

**11.4** During the Term, Licensee shall be responsible for, at its sole cost and expense, clean-up of all waste, garbage, refuse, rubbish and litter at the Licensed Premises and the removal of all snow from the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks. After collection by Licensee, Parks will remove all waste, garbage, refuse, rubbish and litter from the Licensed Premises in accordance with a schedule to be agreed between Licensee and Parks. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' reasonable satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition during the Term.

**11.5** During the Term Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards. Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without the prior written approval of Parks. Any attachments to the trees, such as lights, will not be permitted.

**11.6** At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises and the Fixed and Additional Fixed Equipment to Parks in a reasonably well maintained state, in good repair, ordinary wear and tear excepted.

**11.7** With respect to the activities set forth in Section 1.1(a)(1)(i-iv), at its sole cost and expense, Licensee shall, or shall cause Sublicensee to, keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures during the Term hereof. Such graffiti removal shall be commenced promptly after the appearance of any such graffiti and shall continue until such graffiti is removed.

**11.8** Licensee shall conduct regular pest control inspections and extermination, as needed. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

**11.9** For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall, and shall cause any Sublicensee to, maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with State Department of Environmental

Conservation (“DEC”) and register such tanks with the DEP. Licensee shall, and shall cause any Sublicensee to, assume all registration and update costs. Licensee shall, and shall cause any Sublicensee to, keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randalls Island, New York. Licensee shall, and shall cause any Sublicensee to, perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks which shall not be unreasonably withheld or delayed.

## **XII. APPROVALS**

**12.1** Licensee is solely responsible for obtaining all government approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses and shall not unreasonably withhold or delay its consent to signing, where its signature is needed, any accurate application made by Licensee required to obtain such approvals, permits and licenses.

**12.2** Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or his duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

## **XIII. PARKS EVENTS**

**13.1 (a)** Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with unanticipated events and emergencies at the Licensed Premises.

**(b) (i)** In addition to the services to be performed by Licensee described in this License Agreement, Parks may provide, or provide permits for, additional program activities on the Licensed Premises, including other non-profit or public events (“Parks’ Events”).

**(ii)** Parks agrees that it will not schedule an event or program activity at any time during the occurrence of an event previously scheduled by the Licensee and approved by Parks.

**(iii)** Parks shall consult with the Licensee prior to issuing permits for or scheduling or approving additional program activities or organized events. Parks shall use reasonable efforts to provide the Licensee with no less than thirty (30) (or lesser period as shall be acceptable by the Licensee) days prior written notice of any such proposed program activities.

**(iv)** Parks will use reasonable efforts to ensure that the parties authorized by it to conduct Parks’ Events will be responsible for maintenance and clean-up associated with any such Parks’ Event.

**(v)** Such events shall not be defined as Third-Party Events under this agreement.

**XIV. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND  
SUBLICENSES**

**14.1** Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information he deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than ten percent (10%) in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 14.

**14.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than ten percent of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or Sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

**14.3** No consent to or approval of any assignment or sublicense granted pursuant to this Section 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

## **XV. PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. Licensee shall, and shall cause any Sublicensee to, cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one week's notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall, and shall cause Sublicensee to, be responsible for security of all Licensee's property or Sublicensee's property, as applicable on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee or any Sublicensee.

## **XVI. COMPLIANCE WITH LAWS**

**16.1** Licensee shall comply and cause its employees and agents and Sublicensees to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

**16.2** Licensee shall not use or allow the Licensed Premises, or any portion thereof to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Term of this License.

## **XVII. NON-DISCRIMINATION**

**17.1** Licensee or any Sublicensee shall not unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

**17.2** All advertising for employment shall indicate that Licensee and any Sublicensee is an Equal Opportunity Employer.

## **XVIII. NO WAIVER OF RIGHTS**

**18.0** No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of Commissioner to terminate this License. No waiver by Commissioner of any default on the part of Licensee in performance of

any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

**XIX. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

**19.0** Notwithstanding the indemnification provision of the M&O Agreement, Licensee shall indemnify the City in accordance with this Section 19 as follows:

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

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

C. Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, Sublicensees, contractors, subcontractors, or any other person.

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

**19.2** A. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and its officials and employees (an "Indemnified Party") harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of operations under this License Agreement ("Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any Claims (together with Claims, "Liabilities"), arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been negligent) and/or Licensee's or Sublicensee's or any of their respective employees, agents, servants, contractors or subcontractor's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude an Indemnified Party

from being completely indemnified by Licensee, the Indemnified Party shall be partially indemnified by Licensee to the fullest extent permitted by law.

B. Licensee shall include the following indemnification (or a substantially comparable provision) in each Sublicense Agreement entered into during the Term of this Agreement:

To the fullest extent permitted by law, Sublicensee shall indemnify, defend and hold the City and its officials and employees (an "Indemnified Party") harmless against any and all claims and demands of third parties for injury (including death) or property damage arising out of operations under this Sublicense ("Claims"), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any Claims (together with Claims, "Liabilities"), arising out of or related to any of the operations under this Sublicense (regardless of whether or not the Sublicensee itself has been negligent) and/or Sublicensee's, or any of its employees, agents, servants, contractors or subcontractors, failure to comply with the law or any of the requirements of this Sublicense, regardless of whether any of the foregoing have been negligent. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by Sublicensee to the fullest extent permitted by law.

To the extent Liabilities arise from the following, they shall be excluded from Sublicensee's indemnification and defense obligations under this paragraph: (i) any construction performed by Parks or Parks' contractors, (ii) any Parks' Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement).

C. To the fullest extent permitted by law, the Licensee shall defend, indemnify, and hold harmless the Indemnified Parties against any and all Claims and Liabilities that the Indemnified Parties may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Licensee, any Sublicensee or any of their respective employees, agents, servants, contractors or subcontractors in the operations under this License including any such infringement, violation, or unauthorized use arising while Licensee is in compliance with the License. Insofar as the facts or law relating to any of the foregoing would preclude an Indemnified Party from being completely indemnified by the Licensee, the Indemnified Party shall be partially indemnified by the Licensee to the fullest extent permitted by law.

D. Licensee's obligation to defend, indemnify and hold an Indemnified Party harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this Licensee, nor (ii) adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

## **XX. INSURANCE**

**20.1** A. Throughout the Term, Licensee shall, or shall cause its Sublicensees to, maintain insurance that adheres to requirements of this Section XIX. Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force covering Licensed Premises, and that such insurance adheres to all requirements herein. The City may require higher liability limits or other types of insurance if, in the reasonable opinion of Commissioner, Licensee's operations warrant it.

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

**20.2** A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and, if provided by the Sublicensee, shall be a scheduled endorsement.

C. If Licensee or a Sublicensee of Licensee or a contractor of either serves alcoholic beverages anywhere on the Licensed Premises, Licensee shall carry or cause to be carried liquor law liability insurance not less than One Million Dollars (\$1,000,000) per occurrence, and name the City together with its officials and employees, as additional insureds. Such insurance shall be effective prior to the commencement of any such operations and continue throughout such operations. At his sole discretion, the Commissioner may increase or decrease the limit(s) if the Commissioner believes that the nature of such operations merits an increase or decrease.

**20.3** Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

**20.4** A. With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

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

**20.5** A. Licensee shall maintain comprehensive broad form property insurance (such as an “All Risk” policy) covering the Kiosk. Such insurance shall provide full Replacement Cost coverage for the Kiosk (without depreciation or obsolescence clause) at a value reasonably determined by Parks and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

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

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

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

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

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

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

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

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

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

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

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

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

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

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

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

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

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

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO Form CG 20 26.

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

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured, together with its officials and employees, as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

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

## **XXI. WAIVER OF COMPENSATION**

**21.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

**21.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **XXII. INVESTIGATIONS**

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

**(b) (i)** 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, permit, 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 and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

**(ii)** 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 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

**(A)** 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 any person to testify.

**(B)** 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 Section 22 (d) below without the City incurring any penalty or damages for delay or otherwise.

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

**(i)** The disqualification for a period not to exceed five years from the date of an adverse determination of any person or 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

**(ii)** The cancellation or termination of any and all 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, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

**(d)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

**(i)** 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.

**(ii)** 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.

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

**(iv)** 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 (c) 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 (b) (ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

**(e) (i)** 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.

**(ii)** 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.

(iii) 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.

(iv) 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.

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

### **XXIII. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

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

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

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

**23.3** With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

**23.4** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action,

the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

#### **XXIV. WAIVER OF TRIAL BY JURY**

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

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

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within eighteen (18) months of the termination or conclusion of this License, or within eighteen (18) months after the accrual of the cause of action, whichever first occurs.

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

#### **XXV. CUMULATIVE REMEDIES - NO WAIVER**

**25.0** The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

#### **XXVI. EMPLOYEES**

**26.0** All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

#### **XXVII. BACKGROUND CHECKS**

**27.1** (a) For purposes of this Paragraph, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close

proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with children. Licensee agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel provided in writing to Licensee, including, but not limited to, the following:

(i) Licensee will be responsible for screening of all personnel, including:

(A) substantiating credentials, including, but not limited to, School-Age Child Care (SACC) Certification in accordance with the New York Codes, Rules, and Regulations (“NYCRR”) under 18 NYCRR 414; and,

(B) reference checks.

(ii) Licensee agrees not to hire or retain any personnel who refuse to:

(A) provide the names of references;

(B) provide documentation of credentials;

(C) provide information on criminal conviction records pursuant to Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York as outlined in Background Checks Rider attached hereto as Exhibit F; and,

(D) provide other requested information, which may bear on the applicant’s fitness to work with or in close proximity with children.

(iii) Licensee agrees not to hire or retain any personnel:

(A) who, to Licensee’s knowledge, have not completely and truthfully reported information concerning their criminal convictions pursuant to Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York as outlined in Background Checks Rider attached hereto as Exhibit F;

(B) to the extent disclosed by a background check consistent with Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York, whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; and,

(C) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

(b) Licensee and Parks agree that Licensee is an independent contractor. It is understood and agreed that all personnel employed by Licensee are employees of Licensee and are not employees of the City, and that Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged pursuant to this Agreement. Licensee agrees that neither it nor its personnel or agents will hold themselves out as, or claim to be, officers or employees of the City of New York, or of any department, agency, or unit thereof, and that they will not, by reason hereof, make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City of New York, including, but not limited to, Workers' Compensation and Disability Insurance coverage, unemployment insurance benefits, social security coverage, or employee retirement membership or credit. Nothing included in this Paragraph or in any other provision of this Agreement shall be construed to impose any liability or duty upon the City to the persons, firms, or corporations employed or engaged by Licensee as employees, servants, agents, consultants, experts, or independent contractors or in any other capacity whatsoever or to render the City liable to any persons, firms, corporations, associations or to any government for the acts, omissions, liabilities, obligations, and/or taxes of any nature, including, but not limited to, unemployment insurance of Licensee or its consultants, experts, employees, servants, agents, or independent contractors.

**XXVIII. INDEPENDENT STATUS OF LICENSEE**

**28.0** Licensee is not an employee of the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

**XXIX. INTENTIONALLY OMITTED**

**29.0** Intentionally Omitted.

**XXX. CONFLICT OF INTEREST**

**30.0** Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, 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. Licensee 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 part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

**XXXI. PROCUREMENT OF AGREEMENT**

**31.1** Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

**31.2** For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder, if any, and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this license. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

**XXXII. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

**XXXIII. ALL LEGAL PROVISIONS DEEMED INCLUDED**

**33.0** Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

**XXXIV. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

**34.0** If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

### **XXXV. JUDICIAL INTERPRETATION**

**35.0** Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

### **XXXVI. MODIFICATION OF AGREEMENT**

**36.0** This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

### **XXXVII. NOTICES**

**37.0** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner.

### **XXXVIII. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**38.0** Licensee represents and warrants that Licensee 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 the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

### **XXXIX. MISCELLANEOUS**

**39.0** The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

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

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

HUDSON YARDS/HELL’S KITCHEN  
BID, INC.

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
Acting Corporation Counsel

Exhibits:

- Exhibit A: Premises
- Exhibit B: Report Form
- Exhibit C-1: Citywide Beverage Vending Machine Standards
- Exhibit C-2: Standards for Food Vending Machines
- Exhibit D: Paid Sick Leave Law Concession Rider
- Exhibit E: Form of Certification by Insurance Broker or Agent
- Exhibit F: Background Checks Rider
- Exhibit G: Maintenance and Operation Agreement

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of \_\_\_\_\_, 2018 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK

ss:

COUNTY OF \_\_\_\_\_

On this day of \_\_\_\_\_, 2018 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of The Hudson Yards/Hell's Kitchen BID, Inc. and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

---

Notary Public

EXHIBIT A  
(The Premises)

To be provided upon Certificate to Proceed

**EXHIBIT B**

**REPORT FORM**

<b>Local Law 28 of 2008</b>							
<b>Partnership Reporting Form</b>							
<b>Reporting Period: July 1 - June 30</b>							
<b>Fiscal Year: XXXX</b>							
<b>Partner</b>	<b>Park Location</b>	<b>Borough</b>	<b>Fiscal Year-end</b>	<b>Total Spending - Maintenance and Operations</b>	<b>Total Spending - Programming</b>	<b>Total Spending - Capital</b>	
HY/HK BID	Hudson Boulevard Park	Manhattan	30-Jun				

**EXHIBIT C-1**  
**Citywide Beverage Vending Machines Standards**

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

**A) Specifications regarding the product mix:**

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

**B) Specifications regarding product display placement:**

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

**C) Specifications regarding size:**

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

**D) Calorie labeling:**

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

**E) Promotional space:**

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

**F) Price:**

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

**For Vending Locations Regularly Used by Children age 18 and under**

**A) Specifications regarding the product mix:**

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

**B) Calorie labeling:**

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

(adapted from HC §81.50)

**C) Promotional space:**

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

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

## EXHIBIT C-2

### **New York City Food Standards Part III: Standards for Food Vending Machines**

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

#### **Snack Standards**

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

1) Require that snacks meet all of the following criteria, per package:

- Calories: no more than 200 calories
- Total fat: no more than 7 grams
  - Nuts, seeds, nut butters and cheese are exempt
  - Combination products of dried fruit and nuts are exempt
- Saturated fat: no more than 2 grams
  - Nuts, seeds, nut butters and cheese are exempt
- Trans fat: 0 grams trans fat
- Sodium: no more than 200 mg
  - Cottage cheese: no more than 400 mg
- Sugar: no more than 10 grams
  - Fruit and vegetable products with no added sugar are exempt
  - Yogurt: no more than 30 grams sugar per 8 ounces
- Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)

2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.

3) Require that calorie information is posted for each food item, as packaged.

## EXHIBIT D

### **PAID SICK LEAVE LAW** **CONCESSION AGREEMENT RIDER**

#### Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Licensees 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 Licensee agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Licensee further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Licensee must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Licensee 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 Licensee.

The Licensee is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://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 Licensee can get more information about how to comply with the PSLL. The Licensee 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

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

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSSL (“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 PSSL 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 PSSL. 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 PSSL 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 PSLL 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 PSLL 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 PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

### Retaliation Prohibited

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

### Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. 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 PSSL 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 PSSL.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, 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 PSSL 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 PSSL 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 PSSL 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 PSSL 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 PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT E**  
**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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



## EXHIBIT F

### Background Checks Rider

1. Recruitment; Screening; Fingerprinting: The Licensee shall be responsible for the recruitment and screening of employees and volunteers performing work under the License Agreement, including the verification of credentials, references, and suitability for working with clients and participants. Where consistent with State and federal law, if directed by the Parks Department, the Licensee will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Parks Department.

2. Convictions: The Licensee shall comply with Section 296(15) of the New York State Executive Law and Subdivision 10 of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or an agent thereof to deny employment to any applicant and, under Section 8-107, to take adverse action against any employee, based on (a) the person's or employee's having been convicted of one or more criminal offenses, or (b) a finding of a lack of "good moral character" where such finding is based on the applicant or employee having been convicted of one or more criminal offenses, when the denial or adverse action violates Article 23-A of the New York State Correction Law.

3. Non-Pending Arrests or Accusations: The Licensee shall comply with Section 296(16) of the New York State Executive Law and Subdivision 11 of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer to deny employment to any applicant or take adverse action against any employee when the denial or adverse action violates Section 296(16)—which generally concerns arrests or criminal accusations that are not then pending and which were followed by a termination in favor of the applicant or employee, a youthful offender adjudication, or by a conviction that has been sealed—unless the denial or adverse action is specifically required or permitted by statute.

4. Declare, Print, or Circulate: The Licensee shall comply with Subdivision 11-a of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or agent thereof to declare, print, or circulate, or cause the declaration, printing or circulation of any solicitation, advertisement, or publication that directly or indirectly expresses any limitation or specification in employment based on a person's arrest or criminal conviction.

5. Inquiries:

(i) Applying for Employment: The Licensee shall comply with Subdivision 11-a of Section 8-107 of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer, employment agency or agent thereof to make any inquiry or statement (as those terms are defined in Section 8-107(11-a)) related to the pending arrest or criminal conviction record of any person who is in the process of applying for

employment with the employer or its agent until after the employer or its agent has extended a conditional offer of employment to the applicant.

(ii) Conditional Offer of Employment: Pursuant to Subdivision 11-a(b) of Section 8-107 of the Administrative Code of the City of New York, the Licensee may inquire about the applicant's arrest or conviction record after extending a conditional offer of employment, provided that, prior to taking any adverse employment action based on the inquiry, the employer, employment agency, or agent thereof (a) provides a written copy of the inquiry to the applicant in a manner determined by the New York City Commission on Human Rights; (b) performs an analysis of the applicant pursuant to Article 23-A of the Correction Law and provides a written copy of the analysis to the applicant in a manner determined by the Commission on Human Rights, which shall include but not be limited to supporting documents that formed the basis for an adverse action based on the analysis and the employer's or employment agency's reasons for taking such adverse action against the applicant; and (c) allows the applicant a reasonable time to respond of at least three (3) business days, during which time the position shall be held open for the applicant. Pursuant to Section 8-107(11-a), nothing in that provision prevents an employer, employment agency, or agent thereof from denying employment to any applicant or from taking adverse action against any employee for reasons other than the applicant's or employee's arrest or criminal conviction record.

(iii) Non-Pending Arrests or Accusations: The Licensee shall comply with New York State Executive Law § 296(16) and Section 8-107(11) of the Administrative Code of the City of New York, under which it is an unlawful discriminatory practice for an employer to make any inquiry in writing or otherwise regarding any arrest or criminal accusation of an applicant or employee when the inquiry violates Section 296(16), unless the inquiry is specifically required or permitted by statute.

(iv) Response to Inquiries: Pursuant to New York State Executive Law § 296(16) and Subdivision 11-a(d) of Section 8-107 of the Administrative Code of the City of New York, an applicant's refusal to respond to inquiries or statements prohibited under this Section shall not disqualify the applicant from the prospective employment.

6. Background Checks Required by Law; Licensure: Pursuant to New York State Executive Law § 296(16) and Subdivision 11-a(e) of Section 8-107 of the Administrative Code of the City of New York, Licensees are permitted to perform background checks pursuant to any state, federal or local law that requires criminal background checks for employment purposes or bars employment based on criminal history. In addition, if the Licensee is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, the Licensee may ask questions about those convictions or violations.

Notwithstanding any other provision of this Section, if the Licensee is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), the Licensee may ask applicants the same questions asked by the licensing body, in accordance with New York State Law.

7. Review of Decision: Where practicable, the Licensee shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

8. The Licensee may consult with the Parks Department regarding the application of this Section.

**EXHIBIT G**

**Maintenance and Operation Agreement**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 2)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (“Agreement”) with Row New York Inc. to operate and provide for rowing instructional programs at Sherman Creek Park in Inwood, Manhattan.

**BE IT FURTHER RESOLVED**, that Parks shall submit the Agreement it proposes to enter into with Row New York Inc. 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**

**June 13, 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)

<b>AGENCY:</b> New York City Department of Parks & Recreation ("Parks")	<b>CONCESSION TITLE/DESCRIPTION:</b> Sole Source License Agreement with Row New York Inc. to operate and provide for rowing instructional programs at Sherman Creek Park in Inwood, Manhattan.
<b># VOTES required for                  proposed action = 4</b> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> M300-O

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)  Competitive Sealed Proposals (CSP)\*  
 Different Procedure \* ( Sole Source Agreement  Other \_\_\_\_\_)  
 Negotiated Concession\*

Recommended Concessionaire: Row New York Inc.  EIN  SSN # 11-3632924  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p> <b>Initial Term:</b> To be negotiated  <b>Renewal Option(s) Term:</b> To be negotiated    <b>Total Potential Term:</b> To be negotiated                 </p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>                  (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p> <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                 </p>
<p> <b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A  <b>Address:</b> Harlem River Drive, 10<sup>th</sup> Avenue  <b>Borough:</b> Manhattan C.B. 12  <b>Block # 2150, Lot # 1</b>                      *Attach additional sheet                 </p>	

**CONCESSION TYPE (Check all that apply)**

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

> **Major Concession:**  
 NO  
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

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

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

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.  
 The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.  
  
 The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.  
 The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

**If NO, check the applicable box below:**

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

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

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

**AUTHORIZED AGENCY STAFF**

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

Name Alexander Han

Title Director of Concessions

Signature



Date 6/6/18

**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

  
City Chief Procurement Officer

Date

6/6/18

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

To be determined at a later date - when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate a Sole Source License Agreement with Row New York Inc. to operate and provide for rowing instructional programs at Sherman Creek Park in Inwood, Manhattan.

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

### *Row New York & Sherman Creek Background*

Launched in 2002 with one borrowed boat and eight eager rowers, Row New York Inc. ("Row NY"), a non-profit organization, empowers young people from under-resourced communities to develop confidence, build strength, and pursue excellence by participating in the competitive sport of rowing, while receiving ancillary academic support. Row NY's programming includes a year-round intensive youth program for 7<sup>th</sup>-12<sup>th</sup> graders, physical education classes for students in District 75 schools, summer camps, adaptive programs for athletes with physical and cognitive disabilities, and fitness activities for youth in locked detention. Together, programs serve over 4,100 youth annually. Row NY currently rows out of three NYC Parks locations: the World's Fair Boathouse on Meadow Lake in Flushing Meadows Corona Park, Queens; Paerdegat Basin in Canarsie, Brooklyn; and the Peter Jay Sharp Boathouse (PJSB) at Sherman Creek Park on the Harlem River in Inwood. Over more than 15 years, Row NY has remained in excellent standing with NYC Parks and has had an impeccable safety record.

Row NY has operated PJSB at Sherman Creek Park since 2012 (through a sub-license with the New York Restoration Project, who operates and maintains sections of Sherman Creek Park via a license agreement with NYC Parks), offering year-round rowing and academic instruction to 120 middle and high school students, two-thirds of whom reside in nearby communities. Row NY recruits 70% of its student-athletes from under-resourced schools in the local community, many of which offer only limited athletic opportunities. Sixty-four percent of their students come from families with household incomes below \$50,000 and 82% of their students identify as people of color. All of these student-athletes participate in the year-round program for free. The organization charges a participation fee for the remaining 30% of the student-athletes who add to the socio-economic diversity of the program and help ensure its sustainability.

In the youth rowing programs, Row NY's middle school student-athletes row two times a week and high school student-athletes row five times a week. All student-athletes receive instruction and coaching in water safety,

rowing basics, swim lessons, and competitive racing. In support of the primary rowing programs, student-athletes also participate one to three afternoons a week in academic sessions. Geared toward improving academic performance and college readiness, these sessions include, among other things, SAT and high school test preparation, small group tutoring, assistance with college and financial aid applications, and college field trips. The values of tenacity, discipline, hard work, and perseverance that student-athletes develop through Row NY are reflected in the 2016-2017 program's 100% high school graduation and 100% college entrance rates.

### *Proposal & Funding Plan*

Through a Sole Source License Agreement, Row NY proposes to construct and operate a 13,650-square-foot community boathouse to replace and expand the existing space at PJSB. PJSB's location on water subjects it to continuous stress from currents, tidal fluctuations, and large boat wakes, which has impacted the structural integrity of the boathouse. PJSB requires \$500,000 in urgent repairs, and average annual costs of \$250,000 related to maintenance and repairs, which is an unsustainable ongoing cost for Row NY. Absent construction of a new facility, Row NY would need to suspend operations at Sherman Creek within the next five years.

It is anticipated that the proposed community boathouse would:

- Move Row NY's operations to land, allowing for the safe and sustainable continuation of Row NY's upper Manhattan programming, at a location that is accessible to their students.
- Significantly expand the low-cost and no-cost programs Row NY can offer at the park, more than quintupling the number of youth and adult rowers served, and broadening programming to serve schoolchildren, older adults, people with disabilities, and the broader community.
- Co-locate Row NY's fitness, tutoring, and boat storage uses on one site, reducing the burden on students and parents who now travel across multiple sites, and reducing costs to support increased programming.
- Remediate a currently inaccessible portion of Sherman Creek Park and provide passive park space and seating along the shoreline.

Sherman Creek represents the ideal site for a rowing facility in New York City due to the protected water of the Harlem River, the site's historic and current boathouse use, its accessible location, and the depth of the subject site, which allows for safe and efficient boat maneuvering.

To support its plans, it is anticipated that Row NY will contribute up to \$20 million to the boathouse project, of which \$15 million has been committed to date by private donors. It is anticipated that a Sole Source License Agreement with Row NY will allow the organization to collect fees for a portion of programs offered at the boathouse, the proceeds of which will be used to offset a portion of the costs of providing programming and of operating and maintaining the facility. Proceeds from use of the facility are projected to represent between 15% and 30% of total facility expenses. It is anticipated that the balance of annual costs will be funded by Row NY through private fundraising.

### *Proposed Programming*

As with current programming, it is anticipated that Row NY will offer rowing programs to the broader community. It is anticipated that on the weekends, beginners will be able to participate in Row NY's Learn-to-Row programs, which consist of a one-day introductory lesson and expand to four-week sessions. For those wishing to row regularly or who already have rowing experience, it is anticipated that Row NY would offer community rowing three days a week. In addition to engaging the participants, these fee-based community programs help to support Row NY's free year-round youth and adaptive programming.

It is anticipated that Row NY's programs at Sherman Creek will take place on a year-round basis with on-water programming from March through November, indoor fitness training December through February, and academic programming year-round. Once up and running, a snapshot of Row NY's anticipated programs and their times, based on their experience at other locations, follows:

<b>Program</b>	<b>Days/week</b>	<b>Hrs/Week</b>	<b>Weeks/year</b>	<b>Hrs/year</b>	<b>Estimated Number of Participants</b>
Core program (middle- and high-schoolers)*	6	24	46	1,104	210
Summer Day Camp†	5	15	10	150	200
Indoor Fitness*	5	30	46	1,380	450
Para- and Adaptive Rowing*	5	15	46	690	300
Masters/Scholastic Programs	5	15	10	150	200
Community Learn-to-Row†	1	5	46	230	150
Walk-Up Community Programming†	TBD	TBD	TBD	TBD	TBD
<b>Total</b>	-	-	-	<b>3,704</b>	<b>1,510</b>

\* denotes programs that are free of charge for participants (or 70% of participants for High School and Middle school programs)

† denotes programs that are free or low-cost for community participants based on income

Given that Row NY as a non-profit organization has demonstrated a specific commitment to providing free rowing instruction and academic support for underserved youth; that Row NY has a history of providing high-quality programs at Sherman Creek Park that are at risk due to the condition of its current floating boathouse; and that Row NY has offered to source substantial private funds to complete the boathouse, Parks believes that it is in the best interest of the City to negotiate a Sole Source License Agreement with Row NY at Sherman Creek Park, rather than to proceed with a competitive solicitation process.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with Row NY which will go before the FCRC on June 13, 2018 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with Row NY to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

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

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

The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals;

An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*

The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*

DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_/\_\_/\_\_.

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



NYC Parks

Mitchell J. Silver, FAICP  
Commissioner

City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## MEMORANDUM

**TO:** Hon. Gale Brewer, Manhattan Borough President  
Ebenezer Smith, District Manager, Manhattan Community Board #12

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

**SUBJECT:** Notice of Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with Row New York Inc. to Operate and Provide for Rowing Instructional Programs at Sherman Creek Park in Inwood, Manhattan.

**DATE:** May 4, 2018

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Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 12 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure to negotiate a Sole Source License Agreement with Row New York Inc. to operate and provide for rowing instructional programs at Sherman Creek Park in Inwood, 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 Philip Abramson, NYC Parks Director of Revenue Communications, by phone at (212) 360-3426 or via email at [philip.abramson@parks.nyc.gov](mailto:philip.abramson@parks.nyc.gov).

Thank you.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 3)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules, to negotiate a Sole Source License Agreement (“Agreement”) with the Greenbelt Conservancy, Inc. for the operation and maintenance of The Carousel for All Children as well as a food and beverage and souvenir concession at the facility, located in Willowbrook Park, Staten Island.

**BE IT FURTHER RESOLVED**, that Parks shall submit the Agreement it proposes to enter into with the Greenbelt Conservancy, Inc. 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**

**June 13, 2018**

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

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

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



**AUTHORIZED AGENCY STAFF**

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

Name Alexander Han Title Director of Concessions

Signature  Date 5/31/2018

**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  Date 6/5/18  
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 Parks and Recreation (“Parks”) will be pursuing a Sole Source License Agreement (“Agreement”) pursuant to Section 1-16 of the Concession Rules (“different procedure”) for the reasons listed in section (B)(2).

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

1. Briefly summarize the terms and conditions of the concession. *Add additional sheet, 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 agreement with the Greenbelt Conservancy, Inc.

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

The Greenbelt Conservancy, Inc. (“GC”), a not-for-profit organization, was formed in 1989 to support the operation, administration and public use of the Greenbelt’s city parkland and facilities. GC promotes conservation and enhancement of the Greenbelt through increased public awareness, support and enjoyment of its resources. Through its fundraising efforts, GC has secured millions of dollars of privately raised funds and donation services, which in turn has leveraged millions in capital expense funds for the benefit of the Greenbelt.

Prior to the opening of The Carousel for All Children (“Carousel”) in Willowbrook Park, one of the parks that make up the Staten Island Greenbelt, GC launched a fundraising campaign to raise a board-restricted maintenance fund to help maintain the Carousel and its grounds in perpetuity. The naming of the Carousel figures and the inscription of surrounding pavers helped GC to establish the Carousel maintenance fund which is held in a Merrill Lynch Financial Services account. Since its opening in 1999, GC has been an effective manager and caretaker of the Carousel, a 53-figure hand painted wooden Victorian-style merry-go-round. Since GC was instrumental in the initial concept and fundraising associated with the design and construction of the Carousel, in 1999 the FCRC approved a sole source agreement between Parks and GC to operate the Carousel for a term of five (5) years. In 2004, Parks issued an RFP for the operation of the carousel. GC was the successful proposer.

On September 15, 2008, Parks entered into a license agreement with GC to maintain and conserve the Staten Island Greenbelt and its facilities for a term of five (5) years with an additional five (5) year renewal at Parks’ discretion. Parks exercised the five-year renewal and is pursuing a new license agreement with GC to maintain and conserve the Staten Island Greenbelt. On July 21, 2009, Parks entered into a sole source license agreement with GC specifically for the renovation, operation, and maintenance of the Carousel for a term of four (4) years with an additional five (5) one-year renewal options. Parks executed the fifth and final one-year renewal option which expires September 15, 2018.

GC has made and continues to make substantial investments at the Carousel and its surrounding grounds, including the installation of a sprinkler system, landscape, security services, wood deck stripping and refinishing, and annual interior and exterior painting. In order to continue to provide funding for various investments to and maintenance of the Carousel and its surrounding grounds, GC is requesting a sole source agreement with Parks to operate the Carousel and the food and beverage and souvenir concessions. Under the 2009 license agreement, GC compensates Parks an annual

percentage of 5% of Gross Receipts derived from the operation of these concessions. Parks and GC will negotiate the terms of compensation to Parks in any new resulting sole source agreement.

GC has played an integral role in the genesis of the Carousel and has been successfully operating the Carousel since its inception and continues to maintain a fund solely for the purpose of maintaining the Carousel and its grounds. Therefore, due to the unique nature of this concession and GC's specific commitment to the Carousel Parks, believes it is in the best interest of the City to award the concession through a different procedure and not a competitive solicitation process.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement with GC which will go before the FCRC on June 13, 2018 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with GC to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint public hearing).

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

*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.



NYC Parks

Alyssa Cobb Konon  
Deputy Commissioner  
Planning and Development

T 212.360.3402

E [alyssa.cobb@parks.nyc.gov](mailto:alyssa.cobb@parks.nyc.gov)

City of New York  
Parks & Recreation

The Arsenal  
Central Park  
New York, NY 10065  
[www.nyc.gov/parks](http://www.nyc.gov/parks)

## MEMORANDUM

**TO:** Honorable James Steven Oddo, Staten Island Borough President  
Ms. Debra Derrico, District Manager, Staten Island Community Board #2

**FROM:** Glenn Kaalund, Senior Project Manager, Revenue Division *GSK*

**SUBJECT:** Sole Source License Agreement between the New York City Department of Parks & Recreation and the Greenbelt Conservancy, Inc. for the Operation and Maintenance of The Carousel for All Children, as well as a food, beverage and souvenir concession at the facility located in Willowbrook Park, Staten Island

**DATE:** May 2, 2018

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Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Staten Island Borough President and Staten Island Community Board #2 that the New York City Department of Parks and Recreation intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with the Greenbelt Conservancy, Inc., a New York not-for-profit corporation, for the operation and maintenance of The Carousel for All Children, as well as a food, beverage and souvenir concession at the facility located in Willowbrook Park, Staten Island.

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

Please direct any questions to Glenn Kaalund by phone at (212) 360-1397 or via email at [Glenn.Kaalund@parks.nyc.gov](mailto:Glenn.Kaalund@parks.nyc.gov). Thank you.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

June 13<sup>th</sup>, 2018

(Cal. No. 4)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc., on behalf of the New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement (“License Agreement”) with Souvenir Avanti, Inc. (“Souvenir Avanti”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term beginning upon written notice from NYC & Company, Inc. to Souvenir Avanti and shall continue through December 31, 2019 with an option for the City to renew the License Agreement on substantially the same terms and conditions, in its sole discretion, for two (2) years. For each license year, Souvenir Avanti shall pay royalties equal to Fifteen percent (15%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of Six Thousand dollars (\$6,000) covering the period from commencement of the License Agreement to December 31, 2019.

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

**June 13<sup>th</sup>, 2018**

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

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

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



- 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 \_\_/\_\_/\_\_.
- 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)**

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a Sole Source License Agreement ("License Agreement") with Souvenir Avanti, Inc. ("Souvenir Avanti") for the non-exclusive use of city-owned trademarks on merchandise. Souvenir Avanti produces souvenirs including but not limited to key chains, lapel pins, magnets, and bookmarks that is distributed to retailers such as museum shops and boutiques. Souvenir Avanti's ability to create a successful line of high end keepsakes for the 9/11 Memorial Museum added great depth to the City's licensing program. For these reasons, it is in the City's best interest to negotiate a sole source agreement with Souvenir Avanti. This proposed License Agreement will not bar opportunities for other type of souvenir manufacturers.

***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.

NYC & Company/SBS negotiated that Souvenir Avanti shall pay licensing fees equal to fifteen percent (15%) of net sales with a guaranteed minimum royalty of six thousand dollars (\$6,000) that shall be paid on or before December, 31, 2019.

**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:**

Souvenir Avanti holds a non-concession agreement with NYC & Company for the purpose of testing product interest in its distribution channels and with customers unique to Souvenir Avanti. At the time the non-concession agreement with Souvenir Avanti was executed, the parties anticipated that the revenue would not exceed administrative costs, which are estimated to be \$8,500; however, the products released by Souvenir Avanti were such a success that the royalties for these items exceeded \$7,263 in the first three quarters of the term of the non-concession agreement. With the current royalties and forward looking projections, the licensee will exceed \$8,500 in royalties under its non-concession agreement. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and, based on the information available at the time, there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given that interest in the products has been successful we now believe it is in the City's best interest to move to a concession agreement with Souvenir Avanti. to continue the development of souvenirs. Souvenir Avanti maintains its distinct metal manufacturing facility offering a diverse

collection of high end and economical designs and is able to create new styles daily or upon request. The proposed License Agreement will not bar other opportunities for other souvenir manufacturers and adds great depth to the City's licensing program.

**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 \_\_/\_\_/\_\_, 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 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 \_\_/\_\_/\_\_.

- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.
- \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.

**2. Public Hearing Date, Exception to Public Hearing Requirement**

A Public Hearing was conducted on \_\_/\_\_/\_\_.

***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.

## LICENSE AGREEMENT

AGREEMENT made this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Souvenir Avanti Inc, a corporation organized and existing under the laws of the Canada with its principal place of business located at 116 Leacock Drive, Pointe-Claire, QC, CANADA, H9R-1H1 (hereinafter “Licensee”).

**IN CONSIDERATION OF** the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 in the United States (including its territories and possessions) and Canada (“Territory”). Licensed Products listed in Exhibit 2 shall be sold only in the distribution channels defined in Exhibit 3.

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3<sup>rd</sup> Floor, New York, NY 10019 (“NYC & Company”).

### SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2018 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2018 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 4, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, in combination sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 5 and 6.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Except to the extent that exclusive rights are explicitly granted hereunder, the parties agree and acknowledge that the City reserves the right to use itself or license to others the right to use the Property on any products or services, including those specifically defined as Licensed Products under this License Agreement.

(m) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

**SECTION III  
(Term)**

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Initial Term") of this License Agreement shall commence (Effective Date) and shall continue through December 31, 2019(Termination Date), unless sooner terminated pursuant to the terms and conditions of this License Agreement. Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of Two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option.

**SECTION IV  
(License Years)**

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

**SECTION V  
(Royalties)**

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to Fifteen percent (15%) of Net Sales. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

**SECTION VI  
(Guaranteed Minimum Royalty)**

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties and annual advances in the amounts and on the dates set forth below:

Guaranteed Minimum:

The following total Guaranteed Minimum Royalties, inclusive of the applicable Advance set forth above, as follows:

On or before December 31, 2019: Six Thousand Dollars (\$6,000)

For the avoidance of doubt, any amount accrued prior to the Effective Date will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of the Effective Date as described in Section III above.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

## **SECTION VII**

### **(Royalty Payments, Accounting and Statements)**

Licensee shall furnish to NYC & Company the following no later than thirty (30) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and-Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

## **SECTION VIII**

### **(Audit Rights)**

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other

documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. The parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York pursuant to the provisions of the New York City Charter shall not be diminished, compromised, or abridged in any way.

#### **SECTION IX (No Assignment)**

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

#### **SECTION X (Trademark Ownership)**

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a

suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

## **SECTION XI (Goodwill)**

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will

be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

## **SECTION XII (Termination Rights)**

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

- (e) If Licensor determines that this License Agreement should be terminated without cause.
- (f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.
- (g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

### **SECTION XIII (Post Termination)**

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

### **SECTION XIV (Samples and Approvals)**

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate

information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 4 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 4, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after

consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

#### **SECTION XV (Purchase Rights)**

Licensor shall have the right to purchase from Licensee, at Licensee’s lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee:

#### **SECTION XVI (Indemnification)**

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys’ fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee’s use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee’s failure to comply with the terms of this License Agreement and Licensee’s unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement.

#### **SECTION XVII (Existing Licenses)**

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property.

#### **SECTION XVIII (Insurance)**

Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) having an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, and licensed to transact business where such insurance is issued, in an amount of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, and to include NYC

& Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the most recent editions of both Insurance Services Office (ISO) Form CG 2026 and ISO Form CG 2037. Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, accompanied by either a duly executed "Certification by Broker" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance, evidencing the required limits of coverage and identifying NYC & Company and the City as additional insureds with coverage pursuant to or at least as broad as the most recent editions of both ISO Form CG 2026 and ISO Form CG 2037 under all such policies. Such insurance shall be maintained for at least six (6) years after the last date of sale by Licensee of any Licensed Product. In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this agreement immediately. Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC& Company and the City and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC& Company shall be sent to the address set forth in section XXII below and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this agreement, at law or in equity, including the right to be indemnified as set forth in this agreement.

#### **SECTION XIX (Governing Law)**

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

#### **SECTION XX (No Partnership or Joint Venture)**

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

#### **SECTION XXI (No Manufacturers, Importers, or Sublicensees)**

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

#### **SECTION XXII (Notices)**

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:  
If to Licensor:

NYC & Company  
810 Seventh Ave.  
New York, NY 10019  
ATTN.: Bryan X. Grimaldi  
Chief Operating Officer & General Counsel

With a copy to:

New York City Department of Small Business Services  
110 Williams Street, 2nd Floor  
New York, NY 10038

Additional copy to:

New York City Law Department  
100 Church Street, 6<sup>th</sup> Floor  
New York, NY 10007  
ATTN.: Katherine Winningham

If to Licensee:

Souvenir Avanti Inc,  
Attn: Tony Ronci  
116 Leacock Drive, Pointe-Claire  
QC, CANADA, H9R-1H1

### **SECTION XXIII (Confidentiality)**

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

#### **SECTION XXIV (Investigations)**

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

B. (i) 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, permit, contract, or license entered into with the City of New York, the State of New York, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) The commission 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(ii) 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 paragraph E below without the City of New York 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:

(i) 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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, 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, without the City of New York 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 Licensor.

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 paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) 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.

(ii) 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.

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

(iv) 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 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 C(i) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

F. (i) 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.

(ii) 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.

(iii) 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 of New York, or otherwise transacts business with the City of New York.

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

## **SECTION XXV (Miscellaneous)**

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has 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 Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of New York, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse

effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensor represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensor's knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: \_\_\_\_\_

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY:

\_\_\_\_\_

Acting Corporation Counsel

(Licensee Name)

By:

Its:

Date of Signature: \_\_\_\_\_

Exhibit I  
The Property

Trademarks of the City of New York

Trademarks



## **Exhibit 2**

### **Licensed Products**

Souvenirs including but not limited to Key Chains, Lapel Pins, Magnets, and bookmarks

**Exhibit 3**

**Distribution Channels**

Museum Shops  
Boutiques

## **Exhibit 4**

### **Product Labels and Graphics**

#### City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2018[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2018 [or current year] City of New York. All Rights Reserved.”

## **Exhibit 5 Quality Control Guidelines**

- 1.** All licensed products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for approval prior to any production.
- 2.** Each product submitted for approval must, at every stage, be submitted via NYC & Company's online product approval system, Trademarx. Licensee will be introduced and set up with Trademarx upon contract execution.
- 3.** All prototypes of any items which utilize New York City ("City") trademarks must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
- 4.** Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
  - Initial sketches and/ or design concepts
  - Finished artwork or final proofs
  - Prototypes or pre-production samples
  - Production samples
- 5.** Licensees are required to submit all licensed products in each style and variation.
- 6.** Product submissions shall be reviewed and evaluated for:
  - Accuracy of logo representation
  - Proper use of Pantone colors
  - Proper use of trademark designations
  - General appearance and quality of product
  - NYC & Company policies and standards
- 7.** All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
- 8.** Each logo is distinctive and therefore must be used separately on licensed product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
- 9.** All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
- 10.** Licensees must indicate the size of, and the amount of times, they intend to utilize City logo(s), third party logo(s) and/or corporate identification(s) in relationship to the size of the City logo prior to the licensee's logo use on products.
- 11.** All products are required to utilize holograms, hangtags and/ or labels purchased from the City's exclusive on-product authentication products supplier.
- 12.** Licensee agrees to use the following notice, ™, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2018 [or other year of initial publication]. City of New York. All rights reserved." Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"):

“All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2018 [or other initial year of publication]. City of New York. All rights reserved.” If impracticable in a particular situation, a shortened version of such notices may be used with Licensor’s prior written approval.

**13.** Anytime a new factory is used to produce licensed merchandise, the licensee must have the vendor sign the City’s Ethical Standards Form (see attached). Any product approval form being submitted must list the factory name and factory contact information (foreign or domestic) where production of that particular item will occur. No product approvals will be given without this information.

## Exhibit 6

### Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

#### **Legal Requirements:**

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

#### **Forced Labor:**

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

#### **Child Labor:**

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

#### **Harassment or Abuse:**

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

#### **Discrimination:**

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

#### **Health and Safety:**

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities

are also safe and healthy in accordance with applicable local laws.

**Freedom of Association:**

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

**Compensation and Benefits:**

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

**Hours of Work:**

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

**Communication:**

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

**Monitoring and Compliance:**

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 5)**

**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 HUB-Third Avenue Merchants District Management Association, Inc., (“Third Avenue BID”), to provide for the operation, management and maintenance of a pedestrian plaza located at Third Avenue, East 149th Street, Willis Avenue and East 148th Street in borough of the Bronx (“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 Third Avenue BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Third Avenue 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 the Third Avenue BID to the FCRC for approval.

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

**June 13, 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)

<b>AGENCY:</b> New York City Department of Transportation (DOT)	<b>CONCESSION TITLE/DESCRIPTION:</b> Operation, management and maintenance of a pedestrian plaza located at Third Avenue, East 149th Street, Willis Avenue and East 148th Street in the Borough of the Bronx
<b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> <u>2018Con5</u>

**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: HUB -Third Avenue Merchants District Management Association, Inc.  EIN  SSN # 13-3455415

Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p>Initial Term: <u>To be negotiated</u></p> <p>Renewal Option(s) Term: <u>To be negotiated</u></p> <p>Total Potential Term: <u>To be negotiated</u></p> <hr/> <p>LOCATION OF CONCESSION SITE(S) <input type="checkbox"/> N/A</p> <p>Address: <u>At Third Avenue, East 149th Street, Willis Avenue and East 148th Street (see attached map)</u></p> <p>Borough: <u>Bronx C.B. 1 Block # N/A Lot # N/A</u></p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)</p> <p><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: <u>Maintenance costs</u></p>
--	--

**CONCESSION TYPE (Check all that apply)**

> Significant Concession:

NO

YES Basis:

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

> Major Concession:

NO

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

**AUTHORIZED AGENCY STAFF**

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

Name Michelle Craven Title Senior Executive Director of Cityscape & Franchises

Signature  Date 4/25/18

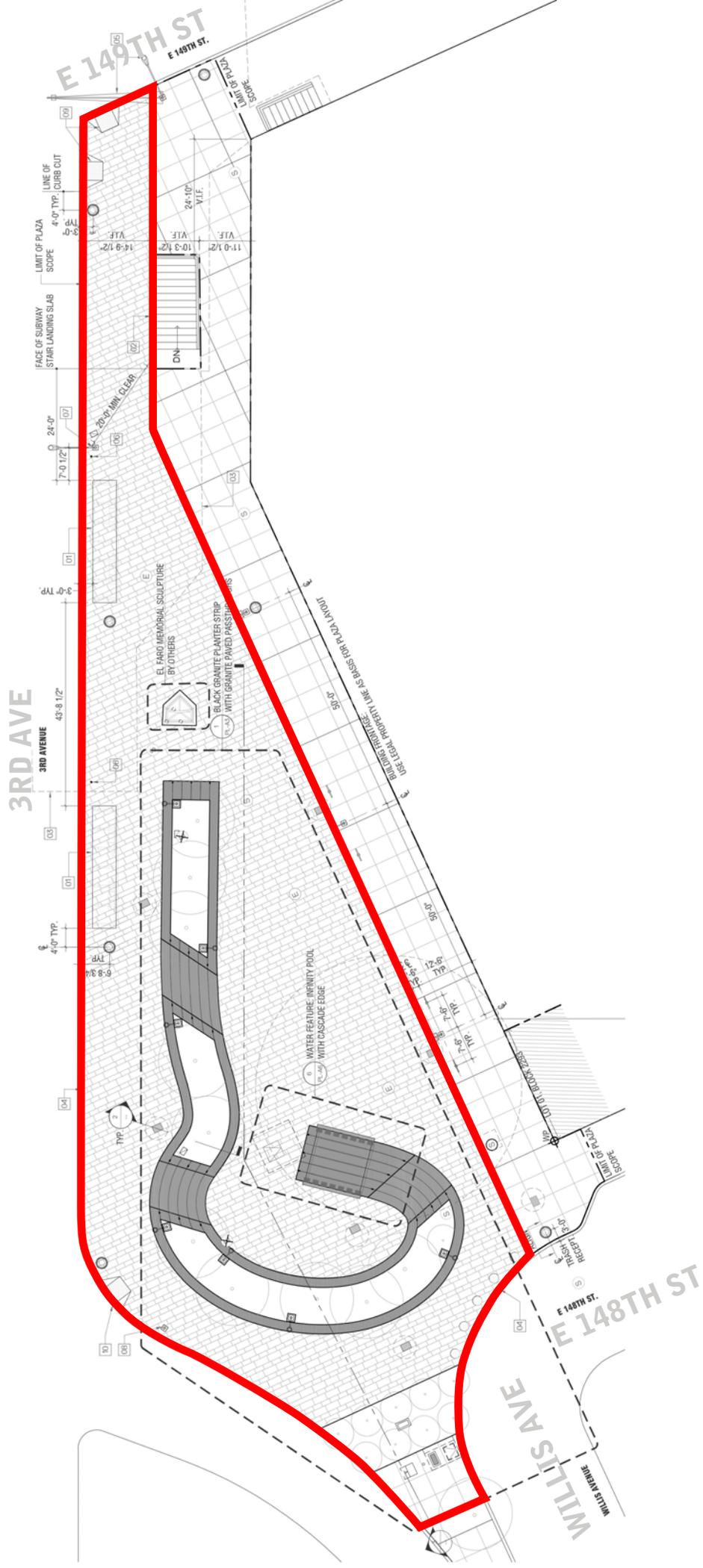
CITY CHIEF PROCUREMENT OFFICER

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 4/25/18  
City Chief Procurement Officer

# Roberto Clemente Plaza, BX

Partner: Third Ave BID



 Licensed Area is Approx. 13,400 SF

# 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 HUB-Third Avenue Merchants District Management Association, Inc. ("Third Avenue BID") for the operation, management and maintenance of a pedestrian plaza located at Third Avenue, East 149th Street, Willis Avenue and East 148th Street, in the borough of the Bronx ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on September 8, 2010 to enter into negotiations with the South Bronx Overall Economic Development Corporation ("SoBRO"). However, in recent years as this Licensed Plaza has been developed and constructed, SoBRO has indicated to DOT that it is no longer interested nor has the capacity to undertake the overall management of the Licensed Plaza. As a result, DOT has identified the Third Avenue BID as a more suitable partner for this space.

The Third Avenue 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 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 Third Avenue BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Third Avenue 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 the Third Avenue BID from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to the Third Avenue 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 the Third Avenue BID because this not-for-profit organization's mission is to improve and enhance the

neighborhood in which the Licensed Plaza is located. The Third Avenue 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 ~~May 9~~ June 13, 2018, DOT intends to seek FCRC authorization to negotiate the Agreement with the Third Avenue 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 the Third Avenue BID.

Once negotiated and if determined by DOT to be a significant concession, DOT 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 the Third Avenue 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**

# 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 HUB-Third Avenue Merchants District Management Association, Inc. ("Third Avenue BID") for the operation, management and maintenance of a pedestrian plaza located at Third Avenue, East 149th Street, Willis Avenue and East 148th Street, in the borough of the Bronx ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on September 8, 2010 to enter into negotiations with the South Bronx Overall Economic Development Corporation ("SoBRO"). However, in recent years as this Licensed Plaza has been developed and constructed, SoBRO has indicated to DOT that it is no longer interested nor has the capacity to undertake the overall management of the Licensed Plaza. As a result, DOT has identified the Third Avenue BID as a more suitable partner for this space.

The Third Avenue 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 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 Third Avenue BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Third Avenue 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 the Third Avenue BID from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to the Third Avenue 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 the Third Avenue BID because this not-for-profit organization's mission is to improve and enhance the

neighborhood in which the Licensed Plaza is located. The Third Avenue 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 June 13, 2018, DOT intends to seek FCRC authorization to negotiate the Agreement with the Third Avenue 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 the Third Avenue BID.

Once negotiated and if determined by DOT to be a significant concession, DOT 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 the Third Avenue 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**



March 30, 2018

The Honorable Ruben Diaz Jr.  
Bronx Borough President  
851 Grand Concourse, 3<sup>rd</sup> Floor  
Bronx, NY 10451

Dear Borough President Diaz Jr.,

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 Third Avenue, East 149th Street, Willis Avenue and East 148th Street, in the borough of the Bronx ("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.

It should be noted that the Licensed Plaza previously received FCRC Step 1 approval on September 8, 2010 to enter into negotiations with the South Bronx Overall Economic Development Corporation ("SoBRO"). However, in recent years as this Licensed Plaza has been developed and constructed, SoBRO has indicated to DOT that it is no longer interested nor has the capacity to undertake the overall management of the Licensed Plaza.

DOT has now identified the HUB-Third Avenue Merchants District Management Association, Inc. 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.

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 212-839-6680.

Sincerely,

A handwritten signature in blue ink, appearing to read "Nivardo Lopez".

Nivardo Lopez  
Borough Commissioner



March 30, 2018

Mr. George Rodriguez  
Chairman  
Bronx Community Board 1  
3024 Third Avenue  
Bronx, NY 10455

Dear Chairman Rodriguez:

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 Third Avenue, East 149th Street, Willis Avenue and East 148th Street, in the borough of the Bronx ("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.

It should be noted that the Licensed Plaza previously received FCRC Step 1 approval on September 8, 2010 to enter into negotiations with the South Bronx Overall Economic Development Corporation ("SoBRO"). However, in recent years as this Licensed Plaza has been developed and constructed, SoBRO has indicated to DOT that it is no longer interested nor has the capacity to undertake the overall management of the Licensed Plaza.

DOT has now identified the HUB-Third Avenue Merchants District Management Association, Inc. 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.

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 212-839-6680.

Sincerely,

Nivardo Lopez  
Borough Commissioner

**PUBLIC NOTICE OF A CONCESSION OPPORTUNITY FOR THE OPERATION, MANAGEMENT AND MAINTENANCE OF A PEDESTRIAN PLAZA LOCATED AT THIRD AVENUE, EAST 149<sup>TH</sup> STREET, WILLIS AVENUE AND EAST 148<sup>TH</sup> STREET, IN THE BOROUGH OF THE BRONX**

Pursuant to the Concession Rules of the City of New York, the Department of Transportation (“DOT”) intends to enter into a concession for the operation, management, and maintenance of a pedestrian plaza located at Third Avenue, East 149th Street, Willis Avenue and East 148th Street, in the borough of the Bronx (“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, or other similar merchandise within the Licensed Plaza.

Subconcessions would be awarded based on solicitations issued by the concessionaire in the basic form of Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award.

It should be noted that the Licensed Plaza previously received FCRC Step 1 approval on September 8, 2010 to enter into negotiations with the South Bronx Overall Economic Development Corporation (“SoBRO”). However, in recent years as this Licensed Plaza has been developed and constructed, SoBRO has indicated to DOT that it is no longer interested nor has the capacity to undertake the overall management of the Licensed Plaza.

DOT has now identified the HUB-Third Avenue Merchants District Management Association, Inc. as a potential concessionaire, but DOT will consider additional expressions of interest from other potential concessionaires for the operation, management, and maintenance of the Licensed Plaza. In order to qualify, interested organizations should be active in the neighborhood of the Licensed Plaza and have demonstrated experience in the management, operation and maintenance of publicly-accessible facilities, including but not limited to programming/events management and concession or retail operation/management.

Organizations may express interest in the proposed concession by contacting Emily Weidenhof, Director of Public Space by email at [plazas@dot.nyc.gov](mailto:plazas@dot.nyc.gov) or in writing at 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041 by May 7, 2018. Ms. Weidenhof may also be contacted with any questions relating to the proposed concession by email or by telephone at (212) 839-4325.

Please note that the New York City Comptroller is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the concession process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007, telephone number (212) 669-2323.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 6)**

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

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

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

June 13, 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)*

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

**SELECTION PROCEDURE**  
 (\* City Chief Procurement Officer approval of CPSR required)

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

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

Negotiated Concession\*

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

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p>Initial Term: To be negotiated                  Renewal Option(s) Term: To be negotiated</p> <p>Total Potential Term: To be negotiated</p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>                  (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____ %</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$ _____ v. _____ % of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula To be negotiated</p>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input type="checkbox"/> N/A                  Address: 1 Randall's Island; New York, NY 10035                  Borough: Manhattan C.B. 11                  Block # 1819 Lot # 50                  *Attach additional sheet</p>	

**CONCESSION TYPE (Check all that apply)**

> **Significant Concession:**

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

> **Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

If NO, check the applicable box below:

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

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

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

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

**AUTHORIZED AGENCY STAFF**

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

Name Alexander Han

Title Director of Concessions

Signature 

Date 12/20/2017

**CITY CHIEF PROCUREMENT OFFICER**

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature   
City Chief Procurement Officer

Date 12/22/17

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

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

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

In 2005, Parks and RIPA entered into the Agreement with Sportime for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park. Sportime invested \$18 million in private funds to build this 20-court facility, far exceeding their minimum capital requirement of \$7.5 million. No public funds or taxpayer dollars were used for the project. At the conclusion of the current facility's its construction, the Agreement commenced on July 1, 2009 for a 20-year term, expiring on June 30, 2029.

The Sportime Tennis Center is a state-of-the-art tennis facility where all New Yorkers are welcome to play on 10 Deco-Turf hard tennis courts and 10 Har-Tru clay tennis courts. Court reservations, group and private instructional programs, and competitive programs and tournaments are offered for adults and juniors alike. Five of the Deco-Turf hard courts are housed in a year-round permanent building, and the other 15 courts are outdoor courts, but bubbled during the winter/indoor season. Half of the facility's courts are available for use by Parks tennis permit holders during the outdoor season. The facility includes

an athletic training center, locker rooms, a pro shop, a café, and classroom and meeting spaces. The Sportime Tennis Center is also the home of the John McEnroe Tennis Academy ("JMTA").

Sportime/JMTA introduces tennis to thousands of local youth from the New York City area, including those who, in many cases, would not otherwise have access to the sport. Their youth engagement and intensive outreach efforts are heavily focused on East Harlem and the South Bronx, the two neighborhoods closest to Randall's Island. To date, Sportime has provided more than 15,000 hours of free group tennis instruction in partnership with local schools and Community Based Organizations ("CBOs"), valued at more than \$1 million to more than 5,000 local youth, plus free tennis lessons for local youth participating in the RIPA summer camp, and has participated in numerous community health fairs and other neighborhood events. These school and CBO programs provide the same world-class tennis instructors, curricula and infrastructure offered to all Sportime/JMTA players.

For their most committed young athletes, Sportime/JMTA provides a pathway to success through competitive tennis, often leading to college scholarships, careers in the industry and, for a few, professional tennis careers. Since 2012, Sportime and JMTA have awarded more than 256 scholarships to its students, valued at more than \$5 million. These Sportime/JMTA scholarships underwrite group and individual tennis and athletic instruction by Sportime and JMTA world-class coaches, as well as equipment, transportation, and tournament travel. A growing number of Sportime's scholarship recipients are youth residing in the communities that border Randall's Island. In 2017, Sportime awarded 51 scholarships citywide and, of these, 26 of the students lived and/or attended school in East Harlem or the South Bronx.

Since 2009, Sportime has paid in excess of \$9 million in license fees to RIPA, with the fees used by RIPA for maintenance and programming across Randall's Island. All operating expenses of the Tennis Center, including maintenance, utilities, and ongoing capital improvements, are borne fully by Sportime. Sportime also employs an approximately 100-person workforce – approximately 50% of whom (excluding tennis pros) reside in the communities surrounding Randall's Island, particularly East Harlem and the South Bronx.

Sportime's increasing popularity has caused the facility to operate at full capacity during prime time hours. Its 20 courts are intensely utilized, with waiting lists during peak weekday and weekend hours. Due to this level of demand, and to the related commitment to grow Sportime's charitable mission of changing the lives of underserved youth through tennis, Sportime has, for the past several years, been engaging in discussions with Parks, Manhattan Community Board 11, Bronx Community Board 1, and the area's elected officials, regarding a proposal to expand the Tennis Center.

In order to best serve the diverse array of New Yorkers who benefit from its offerings and opportunities, Sportime is proposing to expand the existing facility on Randall's Island with an anticipated minimum additional investment of \$20 million in private funds.

It is anticipated that ~~capital improvements~~the project would include the following elements.

- The construction of 10 additional full-size tennis courts with six of those courts being Deco-Turf hard courts. ~~and~~These six Deco-Turf hard courts are anticipated to be housed in a new pre-fabricated permanent indoor metal building. It is anticipated that the other four courts will be Har-Tru clay courts and will be outdoor courts, but bubbled during the winter/indoor season.
- ~~It is anticipated that the expansion project would also include a~~A support building is also anticipated to be constructed. The support building is anticipated to house bathrooms, and viewing and lounge areas that look out onto the courts in the new indoor building and onto the courts in the seasonal bubble.
- aA connector structure is anticipated to be constructed to provide seamless, enclosed pedestrian circulation throughout the facility and to comply with code requirements for the seasonal bubbles. The connector is also anticipated to create a direct path between the existing clubhouse and the proposed support building.
- ~~r~~Renovations to the existing clubhouse are anticipated. On its second floor, the existing outdoor bleachers are anticipated to be removed and converted into an indoor space that will be connected

to the existing clubhouse by a glass walkway. The new second floor is anticipated to have a substantial lounge/viewing area looking out to the exhibition court with an adjoining pantry, bathrooms, and a conference room.

- relocated To accommodate the expansion of the clubhouse, the existing bleacher seating is anticipated to be dismantled. New bleachers are anticipated to be permanently located on the north side of the exhibition court, on an existing asphalt pad, and will seat approximately 473 people.
- A U10 Learning Center is anticipated to be constructed. These are four smaller sized courts which are optimal for new players under 10 years of age learning to play tennis, and for seniors and others with limited mobility. The U10 Learning Center is anticipated to be used for Sportime's free youth programming, and by Randall's Island Park visitors, and would not be used to generate revenue.
- A viewing slope, which is anticipated to abut the new indoor building, is anticipated to provide a gentle incline for families and park visitors to sit and watch tennis in the U10 Learning Center.
- An overlook is anticipated to be constructed on the site of an existing berm, transforming it from a rarely visited landscape feature into an inviting, shaded lawn, and a great vantage point for watching tennis.
- Increased parking is anticipated to be included along the southern end of the site, by extending the driveway to include 19 new parking spaces to accommodate the anticipated increased number of visitors to the Tennis Center.
- An existing basketball court is anticipated to be relocated to the immediate east of its current location. and U10 learning courts—a cluster of smaller tennis courts optimal for players under the age of 10 and for senior citizens learning to play tennis.

Each of these elements is part of a comprehensive design that builds on prior designs for the Tennis Center and for the master plan of Randall's Island Park. These elements would help maintain the open atmosphere of the Island's publicly accessible spaces and encourage engagement with the outdoors through sports, all while creating an improved tennis facility that people of all ages and skill levels can enjoy. The anticipated \$20 million that these elements are likely to cost is based on detailed budget projections prepared by Sportime's construction management and engineering consultant.

Further, Parks believes that soliciting competitive sealed proposals is not in the best interest of the City. The existing Sportime facility is adjacent to the proposed expansion location and customers and staff would be able to take advantage of the entire site's amenities such as locker rooms and food service. The proposed expansion location is not large enough on its own to support a full-service tennis operation, and even if it were, Parks would not want two separate tennis concessions located right next to each other. This way, Sportime would be able to take advantage of its existing support staff and tennis pros to ensure that operations at the expanded facility run efficiently.

It is important to note the following factors when considering why Sportime's initial construction of the 20-court facility cost about \$18 million and this proposed expansion, including 10 new courts, is anticipated to cost, at minimum, approximately \$20 million.

- The proposed expansion project includes not only the 10 new courts – 6 in a permanent building, the U10 Learning Center, the support building, and related infrastructure, but also substantial renovations to the existing site to accommodate the expanded facility, including the elements described above.
- The existing facility uses three air structures, which cover, seasonally, 15 of the existing 20 courts and are less expensive to install than permanent buildings. Currently, only 5 of the existing courts are in a permanent building. This expansion project is anticipated to include as much permanent structure, if not more, than the existing Tennis Center, including the building housing the 6 new Deco-Turf hard courts, the connector structure, the support building, additions to and the clubhouse, and extensive renovations. Advantages of constructing a permanent building, versus an inflatable air structure, include that permanent buildings are more environmentally sustainable, use less energy and offer a lower carbon footprint, they create a valuable and permanent asset,

they are less vulnerable to weather conditions, and they offer a better playing environment for tennis players.

- Construction costs have escalated since 2008-2009. The projection also includes a 20% design contingency, making allowances for further architecture and engineering work that may be required during the construction process, and a 4% mid-year escalation, due to the phasing of improvements over the course of 18-24 months.

The construction of these anticipated improvements is thought to take between 18 and 24 months in order to create as little disruption and inconvenience to the public as possible. As a result, the construction is anticipated to result in minimal to no reductions in available tennis courts. Sportime's patrons are anticipated to be able to continue utilizing the facility throughout the construction, and Parks tennis permit holders will continue to have access to 50% of the available courts during the designated outdoor season, throughout the construction period. A minimal reduction in court availability may occur when some of the existing Har-Tru clay courts are temporarily unavailable, however, these periods are anticipated to be short in duration, and likely contained to one single outdoor season. By phasing this construction period, Sportime expects there to be little to no negative impact on their generation of gross receipts, and, therefore, on their related percentage license fees paid to the City.

In addition to the approximately \$20 million capital investment described above, Sportime is anticipated to invest in additional enhancements as part of an amendment to the Agreement. As the site of the proposed expansion is currently Ballfield #30 on Randall's Island, it is anticipated that Sportime will fund the installation of lights at Ballfields #20 and 21, to encourage nighttime play, while making up for the hours lost at Ballfield #30. It is anticipated that this will add nearly 2,000 hours per year of evening field time, from dusk to 11 p.m. daily, whereas Ballfield #30 has only been able to accommodate about 1,500 hours of play per year and only during daylight hours. The installation of lights at Ballfields #20 and #21 is anticipated to cost approximately \$750,000 and the work ~~will~~ must be performed according to Parks' specifications and ~~completion of the installation will be required~~ prior to Ballfield #30 being taken off-line for construction.

It is also anticipated that this expansion proposal will result in an ~~an~~ significant increase in free community programs offered to local youth by Sportime. Currently, Sportime annually provides more than 2,500 hours of free group tennis programs to more than 450 ~~1,000~~ youth primarily in East Harlem and the South Bronx. With an expanded facility, it is anticipated that Sportime would significantly increase their free school-sponsored and ~~Community Based Organization ("CBO")~~-centered tennis instruction to more than 6,000 hours per year, ~~allowing providing~~ substantially more than 1,300 local youth the opportunity to learn tennis annually. While a majority of these youth would receive instruction at the expanded Tennis Center, ~~it~~ is anticipated that expanded free, off-site, tennis instruction would also be offered at local schools and CBOs in the communities surrounding the Island.

Sportime is also anticipating to increase its scholarship program for its students. With an expanded facility, it is anticipated that Sportime would add approximately 25 scholarships annually, reflecting a 50% increase corresponding to an anticipated 50% increase in tennis court inventory.

Additionally, in the context of the proposed expansion, it is anticipated that Sportime would fund \$1.5 million in improvements to one or more existing parks in East Harlem and the South Bronx. The selection of the park(s) and the scope of work will be coordinated with Parks.

Further, in the context of the proposed expansion, it is anticipated that Sportime will increase and improve the access to Sportime currently enjoyed by NYC Parks tennis permit holders. Presently, tennis permit holders have access to 50% of Sportime's available courts during the outdoor season. There is currently no access for tennis permit holders to lighted courts after 7 p.m. or to any courts during the indoor season. Under this expansion project, it is anticipated that Parks tennis permit holders would have access to Sportime's lighted, outdoor courts during prime evening hours of 7 p.m. to 11 p.m. It is also anticipated that additional courts would be made available during designated hours at designated times of the year that will give Parks tennis permit holders access to Sportime's indoor courts.

Due to the extraordinary circumstances described above including the level of proposed on and off-site capital investment, as well as proposed increases in community programming and scholarships, it is anticipated that an amended license agreement would extend the term of the agreement for twenty-five (25) years from the date that the expanded and improved facility opens to the public. This extension is critical to Sportime's capacity to move forward with this significant anticipated additional \$20 million capital investment, which would bring their total investment on Randall's Island to more than \$38 million. Parks believes that soliciting competitive sealed proposals is not in the best interest of the City. All of the expansion improvements proposed would not only be fully integrated into the existing Tennis Center infrastructure, most all of the improvements are anticipated to be physically attached to the existing facility and accessed through it. This project could not be implemented without its elements being physically attached and integrated with the existing facility. All of the proposed expansion components, and the expanded programs they would allow, would share critical infrastructure with the existing Tennis Center including utilities, HVAC, ingress and egress, public areas, Café services, offices, locker rooms, lobbies, and parking. The expanded and fully integrated facility would also share site-management, professional staff, line staff, and more. Further, the proposed expansion location is not large enough on its own to support a full-service tennis operation, and even if it were, Parks would not want two separate tennis concessions located right next to each other. Therefore, the proposed enhancements could not be provided by another entity through a competitive sealed proposal process.

For the above reasons, and given that Sportime: has proven to be a model concessionaire; has demonstrated a clear commitment to providing world-class tennis facilities on Randall's Island; has demonstrated a clear commitment to providing substantial and first-class -free community tennis programming primarily -for the youth of East Harlem and the South Bronx, had paid in excess of \$9 million in license fees to RIPA so far, with the expectation of increased fees moving forward, and; because Sportime invested substantial capital to construct the tennis center, \$18 million, far more than the \$7.5 million required in the Agreement, with additional capital investment each year, Parks believes that it is in the best interest of the City to amend the Agreement, rather than to proceed with a competitive solicitation process. Given the totality of the circumstances, Parks believes this anticipated amendment creates an extraordinary opportunity for the City.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Sections 1-05 and 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing License Agreement, which will go before the FCRC on ~~June 13~~January 10, 2018 ("Step 1"). Once negotiated, Parks and the FCRC will hold a joint public hearing on the proposed amendment to its existing Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting.

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

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

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; [Explain]

- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

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

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

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

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

In 2005, Parks and RIPA entered into the Agreement with Sportime for the construction, operation, maintenance and management of a year-round tennis facility at Randall's Island Park. Sportime invested \$18 million in private funds to build this 20-court facility, far exceeding their minimum capital requirement of \$7.5 million. No public funds or taxpayer dollars were used for the project. At the conclusion of the current facility's construction, the Agreement commenced on July 1, 2009 for a 20-year term, expiring on June 30, 2029.

The Sportime Tennis Center is a state-of-the-art tennis facility where all New Yorkers are welcome to play on 10 Deco-Turf hard tennis courts and 10 Har-Tru clay tennis courts. Court reservations, group and private instructional programs, and competitive programs and tournaments are offered for adults and juniors alike. Five of the Deco-Turf hard courts are housed in a year-round permanent building, and the other 15 courts are outdoor courts, but bubbled during the winter/indoor season. Half of the facility's courts are available for use by Parks tennis permit holders during the outdoor season. The facility includes

an athletic training center, locker rooms, a pro shop, a café, and classroom and meeting spaces. The Sportime Tennis Center is also the home of the John McEnroe Tennis Academy ("JMTA").

Sportime/JMTA introduces tennis to thousands of local youth from the New York City area, including those who, in many cases, would not otherwise have access to the sport. Their youth engagement and intensive outreach efforts are heavily focused on East Harlem and the South Bronx, the two neighborhoods closest to Randall's Island. To date, Sportime has provided more than 15,000 hours of free group tennis instruction in partnership with local schools and Community Based Organizations ("CBOs"), valued at more than \$1 million to more than 5,000 local youth, plus free tennis lessons for local youth participating in the RIPA summer camp, and has participated in numerous community health fairs and other neighborhood events. These school and CBO programs provide the same world-class tennis instructors, curricula and infrastructure offered to all Sportime/JMTA players.

For their most committed young athletes, Sportime/JMTA provides a pathway to success through competitive tennis, often leading to college scholarships, careers in the industry and, for a few, professional tennis careers. Since 2012, Sportime and JMTA have awarded more than 256 scholarships to its students, valued at more than \$5 million. These Sportime/JMTA scholarships underwrite group and individual tennis and athletic instruction by Sportime and JMTA world-class coaches, as well as equipment, transportation, and tournament travel. A growing number of Sportime's scholarship recipients are youth residing in the communities that border Randall's Island. In 2017, Sportime awarded 51 scholarships citywide and, of these, 26 of the students lived and/or attended school in East Harlem or the South Bronx.

Since 2009, Sportime has paid in excess of \$9 million in license fees to RIPA, with the fees used by RIPA for maintenance and programming across Randall's Island. All operating expenses of the Tennis Center, including maintenance, utilities, and ongoing capital improvements, are borne fully by Sportime. Sportime also employs an approximately 100-person workforce – approximately 50% of whom (excluding tennis pros) reside in the communities surrounding Randall's Island, particularly East Harlem and the South Bronx.

Sportime's increasing popularity has caused the facility to operate at full capacity during prime time hours. Its 20 courts are intensely utilized, with waiting lists during peak weekday and weekend hours. Due to this level of demand, and to the related commitment to grow Sportime's charitable mission of changing the lives of underserved youth through tennis, Sportime has, for the past several years, been engaging in discussions with Parks, Manhattan Community Board 11, Bronx Community Board 1, and the area's elected officials, regarding a proposal to expand the Tennis Center.

In order to best serve the diverse array of New Yorkers who benefit from its offerings and opportunities, Sportime is proposing to expand the existing facility on Randall's Island with an anticipated minimum additional investment of \$20 million in private funds.

It is anticipated that capital improvements would include the following elements.

- The construction of 10 additional full-size tennis courts with six of those courts being Deco-Turf hard courts. These six Deco-Turf hard courts are anticipated to be housed in a new pre-fabricated permanent indoor metal building. It is anticipated that the other four courts will be Har-Tru clay courts and will be outdoor courts, but bubbled during the winter/indoor season.
- A support building is also anticipated to be constructed. The support building is anticipated to house bathrooms, and viewing and lounge areas that look out onto the courts in the new indoor building and onto the courts in the seasonal bubble.
- A connector structure is anticipated to be constructed to provide seamless, enclosed pedestrian circulation throughout the facility and to comply with code requirements for the seasonal bubbles. The connector is also anticipated to create a direct path between the existing clubhouse and the proposed support building.
- Renovations to the existing clubhouse are anticipated. On its second floor, the existing outdoor bleachers are anticipated to be removed and converted into an indoor space that will be connected to the existing clubhouse by a glass walkway. The new second floor is anticipated to have a

substantial lounge/viewing area looking out to the exhibition court with an adjoining pantry, bathrooms, and a conference room.

- To accommodate the expansion of the clubhouse, the existing bleacher seating is anticipated to be dismantled. New bleachers are anticipated to be permanently located on the north side of the exhibition court, on an existing asphalt pad, and will seat approximately 473 people.
- A U10 Learning Center is anticipated to be constructed. These are four smaller sized courts which are optimal for new players under 10 years of age learning to play tennis, and for seniors and others with limited mobility. The U10 Learning Center is anticipated to be used for Sportime's free youth programming, and by Randall's Island Park visitors, and would not be used to generate revenue.
- A viewing slope, which is anticipated to abut the new indoor building, is anticipated to provide a gentle incline for families and park visitors to sit and watch tennis in the U10 Learning Center.
- An overlook is anticipated to be constructed on the site of an existing berm, transforming it from a rarely visited landscape feature into an inviting, shaded lawn, and a great vantage point for watching tennis.
- Increased parking is anticipated to be included along the southern end of the site, by extending the driveway to include 19 new parking spaces to accommodate the anticipated increased number of visitors to the Tennis Center.
- An existing basketball court is anticipated to be relocated to the immediate east of its current location.

Each of these elements is part of a comprehensive design that builds on prior designs for the Tennis Center and the master plan of Randall's Island Park. These elements would help maintain the open atmosphere of the Island's publicly accessible spaces and encourage engagement with the outdoors through sports, all while creating an improved tennis facility that people of all ages and skill levels can enjoy. The anticipated \$20 million that these elements are likely to cost is based on detailed budget projections prepared by Sportime's construction management and engineering consultant.

It is important to note the following factors when considering why Sportime's initial construction of the 20-court facility cost about \$18 million and this proposed expansion, including 10 new courts, is anticipated to cost, at minimum, \$20 million.

- The proposed expansion project includes not only the 10 new courts – 6 in a permanent building, the U10 Learning Center, the support building, and related infrastructure, but also substantial renovations to the existing site to accommodate the expanded facility, including the elements described above.
- The existing facility uses three air structures, which cover, seasonally, 15 of the existing 20 courts and are less expensive to install than permanent buildings. Currently, only 5 of the existing courts are in a permanent building. This expansion project is anticipated to include as much permanent structure, if not more, than the existing Tennis Center, including the building housing the 6 new Deco-Turf hard courts, the connector structure, the support building, additions to the clubhouse, and extensive renovations. Advantages of constructing a permanent building, versus an inflatable air structure, include that permanent buildings are more environmentally sustainable, use less energy and offer a lower carbon footprint, they create a valuable and permanent asset, they are less vulnerable to weather conditions, and they offer a better playing environment for tennis players.
- Construction costs have escalated since 2008-2009. The projection also includes a 20% design contingency, making allowances for further architecture and engineering work that may be required during the construction process, and a 4% mid-year escalation, due to the phasing of improvements over the course of 18-24 months.

The construction of these anticipated improvements is thought to take between 18 and 24 months in order to create as little disruption and inconvenience to the public as possible. As a result, the construction is anticipated to result in minimal to no reductions in available tennis courts. Sportime's patrons are anticipated to be able to continue utilizing the facility throughout the construction, and Parks tennis permit

holders will continue to have access to 50% of the available courts during the designated outdoor season, throughout the construction period. A minimal reduction in court availability may occur when some of the existing Har-Tru clay courts are temporarily unavailable, however, these periods are anticipated to be short in duration, and likely contained to one single outdoor season. By phasing this construction period, Sportime expects there to be little to no negative impact on their generation of gross receipts, and, therefore, on their related percentage license fees paid to the City.

In addition to the approximately \$20 million capital investment described above, Sportime is anticipated to invest in additional enhancements as part of an amendment to the Agreement. As the site of the proposed expansion is currently Ballfield #30 on Randall's Island, it is anticipated that Sportime will fund the installation of lights at Ballfields #20 and 21, to encourage nighttime play, while making up for the hours lost at Ballfield #30. It is anticipated that this will add nearly 2,000 hours per year of evening field time, from dusk to 11 p.m. daily, whereas Ballfield #30 has only been able to accommodate about 1,500 hours of play per year and only during daylight hours. The installation of lights at Ballfields #20 and #21 is anticipated to cost approximately \$750,000 and the work will be performed according to Parks' specifications and prior to Ballfield #30 being taken off-line for construction.

It is also anticipated that this expansion proposal will result in a significant increase in free community programs offered to local youth by Sportime. Currently, Sportime annually provides more than 2,500 hours of free group tennis programs to more than 450 youth primarily in East Harlem and the South Bronx. With an expanded facility, it is anticipated that Sportime would significantly increase their free school-sponsored and CBO-centered tennis instruction to more than 6,000 hours per year, providing substantially more than 1,300 local youth the opportunity to learn tennis annually. While a majority of these youth would receive instruction at the expanded Tennis Center, it is anticipated that expanded free, off-site, tennis instruction would also be offered at local schools and CBOs in the communities surrounding the Island.

Sportime is also anticipating to increase its scholarship program for its students. With an expanded facility, it is anticipated that Sportime would add approximately 25 scholarships annually, reflecting a 50% increase corresponding to an anticipated 50% increase in tennis court inventory.

Additionally, in the context of the proposed expansion, it is anticipated that Sportime would fund \$1.5 million in improvements to one or more existing parks in East Harlem and the South Bronx. The selection of the park(s) and the scope of work will be coordinated with Parks.

Further, in the context of the proposed expansion, it is anticipated that Sportime will increase and improve the access to Sportime currently enjoyed by NYC Parks tennis permit holders. Presently, tennis permit holders have access to 50% of Sportime's available courts during the outdoor season. There is currently no access for tennis permit holders to lighted courts after 7 p.m. or to any courts during the indoor season. Under this expansion project, it is anticipated that Parks tennis permit holders would have access to Sportime's lighted, outdoor courts during prime evening hours of 7 p.m. to 11 p.m. It is also anticipated that additional courts would be made available during designated hours at designated times of the year that will give Parks tennis permit holders access to Sportime's indoor courts.

Due to the extraordinary circumstances described above including the level of proposed on and off-site capital investment, as well as proposed increases in community programming and scholarships, it is anticipated that an amended license agreement would extend the term of the agreement for twenty-five (25) years from the date that the expanded and improved facility opens to the public. This extension is critical to Sportime's capacity to move forward with this significant anticipated additional \$20 million capital investment, which would bring their total investment on Randall's Island to more than \$38 million. Parks believes that soliciting competitive sealed proposals is not in the best interest of the City. All of the expansion improvements proposed would not only be fully integrated into the existing Tennis Center infrastructure, most all of the improvements are anticipated to be physically attached to the existing facility and accessed through it. This project could not be implemented without its elements being physically attached and integrated with the existing facility. All of the proposed expansion components,

and the expanded programs they would allow, would share critical infrastructure with the existing Tennis Center including utilities, HVAC, ingress and egress, public areas, Café services, offices, locker rooms, lobbies, and parking. The expanded and fully integrated facility would also share site-management, professional staff, line staff, and more. Further, the proposed expansion location is not large enough on its own to support a full-service tennis operation, and even if it were, Parks would not want two separate tennis concessions located right next to each other. Therefore, the proposed enhancements could not be provided by another entity through a competitive sealed proposal process.

For the above reasons, and given that Sportime: has proven to be a model concessionaire; has demonstrated a clear commitment to providing world-class tennis facilities on Randall’s Island; has demonstrated a clear commitment to providing substantial and first-class free community tennis programming primarily for the youth of East Harlem and the South Bronx, had paid in excess of \$9 million in license fees to RIPA so far, with the expectation of increased fees moving forward, and; because Sportime invested substantial capital to construct the tennis center, \$18 million, far more than the \$7.5 million required in the Agreement, with additional capital investment each year, Parks believes that it is in the best interest of the City to amend the Agreement, rather than to proceed with a competitive solicitation process. Given the totality of the circumstances, Parks believes this anticipated amendment creates an extraordinary opportunity for the City.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Sections 1-05 and 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing License Agreement, which will go before the FCRC on June 13, 2018 (“Step 1”). Once negotiated, Parks and the FCRC will hold a joint public hearing on the proposed amendment to its existing Agreement before presenting it to the FCRC for “Step 2” approval at a second public meeting.

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

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

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

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.



NYC Parks

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## MEMORANDUM

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

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

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

DATE: December 1, 2017

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

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

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