



## Department of Transportation

POLLY TROTTEBERG, Commissioner

January 4, 2019

The Honorable Eric Adams  
Brooklyn Borough President  
Brooklyn Borough Hall  
209 Joralemon Street  
Brooklyn, NY 11201

Mr. Gerald A. Esposito, District Manager  
Brooklyn Community Board 1  
435 Graham Avenue  
Brooklyn, NY 11211

Re: Pedestrian Plaza Concession

Dear Mr. Adams and Mr. Esposito:

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 on Humboldt Street between Moore Street and Varet Street, in the borough of Brooklyn ("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 DOT previously received FCRC Step 1 approval on April 14, 2010 to enter into negotiations with the Brooklyn Economic Development Corp. ("Brooklyn EDC") for the operation, management and maintenance of the Licensed Plaza. However, Brooklyn EDC is now a defunct organization that cannot undertake the overall management of the Licensed Plaza.

DOT has identified The New York City Economic Development Corporation 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 212-839-6210.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith Bray", is written over a horizontal line.

Keith Bray  
Brooklyn Borough Commissioner

**PUBLIC NOTICE OF A CONCESSION OPPORTUNITY FOR THE OPERATION, MANAGEMENT AND MAINTENANCE OF A PEDESTRIAN PLAZA LOCATED ON HUMBOLDT STREET BETWEEN MOORE STREET AND VARET STREET, IN THE BOROUGH OF BROOKLYN**

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 on Humboldt Street between Moore Street and Varet Street, in the borough of Brooklyn (“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 DOT previously received FCRC Step 1 approval on April 14, 2010 to enter into negotiations with the Brooklyn Economic Development Corp. (“Brooklyn EDC”) for the operation, management and maintenance of the Licensed Plaza. However, Brooklyn EDC is now a defunct organization that cannot undertake the overall management of the Licensed Plaza.

DOT has identified The New York City Economic Development Corporation 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 February 11, 2019. 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 organization 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.

**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> <u>New York City Department of Transportation (DOT)</u>	<b>CONCESSION TITLE/DESCRIPTION:</b> <u>Operation, management and maintenance of a pedestrian plaza located on Humboldt Street between Moore Street and Varet Street in the Borough of Brooklyn</u>
<b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> <u>2018Con4</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: The New York City Economic Development Corporation ☒ EIN ☐ SSN #45-5311842

Attach Memo(s) \*

<b>CONCESSION AGREEMENT TERM</b>  <b>Initial Term:</b> <u>To be negotiated</u>  <b>Renewal Option(s) Term:</b> <u>To be negotiated</u>  <b>Total Potential Term:</b> <u>To be negotiated</u>	<b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b> (Check all that apply)  <input type="checkbox"/> Additional description attached  <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____ % <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$ _____ v. _____ % of Gross Receipts <input checked="" type="checkbox"/> Other formula: <u>Maintenance costs</u>
<b>LOCATION OF CONCESSION SITE(S)</b> <input type="checkbox"/> N/A  <b>Address:</b> <u>On Humboldt Street between Moore Street and Varet Street, Borough of Brooklyn (see attached map)</u>  <b>Borough:</b> <u>Brooklyn C.B. 1 Block # N/A Lot # N/A</u>	

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

- > Significant Concession:**  
☒ NO  
☐ YES Basis:  
☐ Total potential term =>10 years ☐ Projected annual income/value to City >\$100,000 ☐ Major Concession
- > Major Concession:**  
☒ NO  
☐ YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

**AUTHORIZED AGENCY STAFF**

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

Name Michelle Craven Title Assistant Commissioner for Director of Cityscape and Franchises

Signature 

Date 1/24/19

**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   /  /  

**City Chief Procurement Officer**

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with The New York City Economic Development Corporation ("EDC") for the operation, management and maintenance of a pedestrian plaza located on Humboldt Street between Moore Street and Varet Street, in the borough of Brooklyn ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on April 14, 2010 to enter into negotiations with the Brooklyn Economic Development Corp. ("Brooklyn EDC") for the operation, management and maintenance of the Licensed Plaza. However, Brooklyn EDC is now a defunct organization that cannot undertake the overall management of the Licensed Plaza.

On January 25, 2019, DOT published a notice in the City Record soliciting expressions of interest in the proposed concession by contacting DOT's Director of Public Space by email, phone or in writing by February 11, 2019 .

EDC 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 EDC, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by EDC 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 EDC from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to EDC, 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 EDC because part of this not-for-profit organization's mission is community/neighborhood development and EDC's operation, management and maintenance of the Licensed Plaza would be consistent with and further this purpose. In addition, EDC manages the adjacent Moore Street Retail Market and has a specific interest in the Licensed Plaza.

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

On February 13, 2019, DOT intends to seek FCRC authorization to negotiate the Agreement with EDC 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 EDC.

Once negotiated and if determined by DOT to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with EDC 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**

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. )**

**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 New York City Economic Development Corporation (“EDC”), to provide for the operation, management and maintenance of a pedestrian plaza located on Humboldt Street between Moore Street and Varet Street in Brooklyn (“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 EDC, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by EDC 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 EDC to the FCRC for approval.

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

**February 13, 2019**

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) )

<b>AGENCY</b> <u>New York City</u> <u>Department of Parks and Recreation</u>	<b>RECOMMENDED CONCESSIONAIRE</b>  <b>Name</b> <u>Greenbelt Conservancy, Inc.</u> <b>Address</b> <u>200 Nevada Avenue, Staten Island, NY 10306</u> <b>Telephone #</b> <u>718-667-2165</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>13-3481845</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION</b> <u>Sole Source License Agreement between the New York City Department of Parks and 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</u>
<b># VOTES required for proposed action = <u>4</u></b> <input type="checkbox"/> <b>N/A</b>	<b>CONCESSION I.D.#</b> <u>R30-CL, SV</u>	

**LOCATION OF CONCESSION SITE(S)\***      **Address:** 2 Eton Place, Willowbrook Park      ☐ **N/A**

\*Attach additional sheet

**Borough:** Staten Island **C.B.** 2 **Block #** 2030 **Lot #** 155

## 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 **6/13/2018**.
- ☐ Negotiated Acquisition\*

### CONCESSION AGREEMENT TERM

**Initial Term: From:** Notice to Proceed  
**To:** Five (5) Years from Notice to Proceed

**Renewal Option(s) Term:** Four (4) one-year renewal options, exercisable at Parks' sole discretion

**Total Potential Term:** Nine (9) Years

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

### ANNUAL REVENUE

(Check all that apply)

(☐ Additional sheet (☐s) attached)

☒ **Annual Fee(s)** \$6,000 (Year One (1) to Year Five (5))  
\$6,500 (Per 1-Year Renewal Option)

☒ **% Gross Receipts**

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

☐ **Other** \_\_\_\_\_

## NOTIFICATION REQUIREMENTS

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

☐ **YES**    ☒ **NO**

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

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

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

- ☒ The Agency certifies that each affected CB/BP received written notice by **5/02/2018**, which was at least 40 days in advance of the FCRC meeting on **6/13/2018** at which the agency sought and received approval to use a different selection procedure.
- ☐ The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

**Law Department approved concession agreement on** \_\_/\_\_/\_\_

**Award is a major concession.**

☐ **YES**    ☒ **NO**



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

☐ CPC approved on \_\_/\_\_/\_\_

☐ City Council approved on \_\_/\_\_/\_\_ or ☐ N/A

**AUTHORIZED AGENCY STAFF**

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

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

☒ The concession was approved by the FCRC on \_\_/\_\_/\_\_.

☐ 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 ("Agreement") with the Greenbelt Conservancy, Inc. ("GC").

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

**A. SELECTION PROCEDURE**

☒ Sole Source

☐ Other *Describe:*

**B. NEGOTIATIONS**

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

The Agreement shall permit GC to operate and maintain The Carousel for all Children ("Carousel"), as well as a food, beverage, and souvenirs concession at the facility located in Willowbrook Park, Staten Island. The Agreement provides for a term commencing on the date Parks gives written notice to proceed to the Greenbelt Conservancy and terminating on September 14, 2019, unless a new maintenance and operation agreement is entered into between Parks and the Greenbelt Conservancy by that date, in which event the term shall be five years from the commencement date, with options to renew for up to four (4) one-year periods at Parks' sole discretion, provided that in no event shall the term of the Agreement extend past the end of any new maintenance and operation agreement. GC shall pay the City a guaranteed annual flat fee of \$6,000 each year of the five (5) year term and \$6,500 a year for any renewal thereof.

**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:**

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 the 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. 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 option which was exercised by Parks. This agreement was extended for one further year to September 14, 2019.

GC has played an integral role in the genesis of the Carousel, has been successfully operating the Carousel since its inception and continues to maintain a fund solely to support the Carousel and its grounds. Since the Carousel began operating in 1999, GC has been an effective manager and caretaker of the Carousel, a 53-figure hand-painted wooden Victorian-style merry-go-round. GC has made and continues to make substantial investments at the Carousel and its

surrounding grounds within the Licensed Premises, including the installation of a sprinkler system, landscape and security services, wood deck stripping and refinishing and annual interior and exterior painting.

Given that GC has demonstrated a commitment to maintaining and improving the Carousel and Willowbrook Park as integral parts of the Staten Island Greenbelt, Parks believes that it is in the best interest of the City to approve a Sole Source License Agreement with GC, rather than award through a competitive solicitation process.

**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 citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_.  
☐ \_\_/\_\_/\_\_, 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.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_\_\_ )

**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 (“Agreement”) with the Greenbelt Conservancy, Inc. The agreement shall permit Greenbelt Conservancy to operate and maintain the Carousel for all Children (“Carousel”), as well as a food, beverage, and souvenir concession at the facility located in Willowbrook Park Staten Island. The Agreement provides for a term commencing on the date Parks gives written notice to proceed to the Greenbelt Conservancy and terminating on September 14, 2019, unless a new maintenance and operation agreement is entered into between Parks and the Greenbelt Conservancy by that date, in which event the term shall be five years from the commencement date, with options to renew for up to four (4) one-year periods at Parks' sole discretion, provided that in no event shall the term of the Agreement extend past the end of any new maintenance and operation agreement. Greenbelt Conservancy, Inc., shall pay the City a guaranteed annual flat fee of \$6,000 each year of the five year term, and \$6,500 a year for any renewal thereof.

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

**February 13, 2019**

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

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

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

**LICENSE AGREEMENT**

**BETWEEN**

**GREENBELT CONSERVANCY, INC.**

**AND**

**CITY OF NEW YORK  
DEPARTMENT OF  
PARKS & RECREATION**

*for*

**THE OPERATION, MAINTENANCE AND MANAGEMENT OF THE  
CAROUSEL FOR ALL CHILDREN,  
WILLOWBROOK PARK,**

**STATEN ISLAND, NEW YORK**

**R30-CL, SV**

**DATED: \_\_\_\_\_, 2019**

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**LICENSE AGREEMENT** ("License" or "License Agreement") made this \_\_\_\_\_ day of \_\_\_\_\_, 2019, 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 Greenbelt Conservancy, Inc. ("Licensee"), a not-for-profit corporation organized under the laws of the State of New York ("State") whose address is 200 Nevada Avenue, Staten Island, New York 10306.

**WHEREAS**, Parks, pursuant to the City Charter, has jurisdiction over Parklands of the City of New York and facilities therein; and

**WHEREAS**, Willowbrook Park in the Borough of Staten Island is property under the jurisdiction and control of Parks; and

**WHEREAS**, Willowbrook Park is one of the parks that make up the Staten Island Greenbelt; and

**WHEREAS**, Licensee was formed in 1989 to support the operation, administration and public use of the Greenbelt's city parkland and facilities; and

**WHEREAS**, the Carousel for All Children ("Carousel") is located in a building ("Carousel Building") in Willowbrook Park, just south of Eton Place, off Richmond Avenue, as specifically denoted on Exhibit A ("Licensed Premises") ; and

**WHEREAS**, Licensee has renovated, operated, maintained and managed the Licensed Premises, including the Carousel, as a Parks' licensee since 1999 through a series of license agreements, the last of which has now expired; and

**WHEREAS**, Licensee has been an effective manager and caretaker of the Carousel and has maintained it through a board-restricted maintenance fund of Licensee; and

**WHEREAS**, Licensee and Parks working together have created an effective public-private partnership in connection with improving, among other things, Willowbrook Park through a License Agreement made September 15, 2008 and extended to September 14, 2019 by letter agreement dated September 13, 2018 (the "M&O Agreement"); and

**WHEREAS**, Licensee and Parks are currently negotiating a new M&O Agreement (the "New M&O Agreement"); and

**WHEREAS**, the Commissioner desires to provide for the continued operation, maintenance and management of the Carousel as a concession for the accommodation, enjoyment and convenience of the public; and

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") has authorized Parks to enter into a Sole Source License Agreement with Licensee to provide for the operation, maintenance, and management of the Carousel and food and souvenir pushcarts at the Licensed Premises for the benefit of the public; and

**WHEREAS**, Licensee desires to operate, maintain and manage the Carousel and the Carousel Building, and operate food and souvenir pushcarts associated therewith for the benefit of the public at Willowbrook Park, in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into a license agreement specifying rights and obligations with respect to the operation, maintenance of the Carousel, Carousel Building and adjacent areas;

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

### **GRANT OF LICENSE**

**1.1** Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to operate, maintain and manage the Carousel, Carousel Building, as well as one non-motorized pushcart for the sale of hot dogs, soft drinks, non-alcoholic beverages and snack food items and one non-motorized pushcart as a gift/souvenir concession, all at the Licensed Premises for the enjoyment and convenience of the public, in accordance with the terms herein and to the satisfaction of the Commissioner of Parks ("Commissioner"). (The two authorized pushcarts are hereinafter referred to as the "Pushcarts"). The operation of additional pushcarts is subject to Parks' prior written approval. The design and dimensions of all pushcarts are subject to Parks prior written approval.

**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 for the construction and lawful operation of the Licensed Premises in accordance with the terms of this License. In order to be in compliance with this License Agreement, Licensees must fulfill all of the obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill any of such obligations herein for any reason, subject to the notice and cure periods set forth in Section 3.3(a) hereof.

**1.3** It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Except as 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 and so long as this License is not terminated by the Commissioner in accordance with the terms herein.

**1.4** Licensee shall provide, at all times, 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.

**1.5** The name of the Carousel must remain “Carousel for All Children” (the “Name”), unless otherwise approved by Parks. Parks shall be the owner of the portion of any name selected by Licensee for use at the Licensed Premises that indicates or refers to Parks property or a preexisting facility name. The City will not own any portion of a name that consists of the name, portrait or signature of a living or deceased individual or an identifier that is not otherwise associated with Parks’ property.

### **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 Licensed Premises.

(b) Intentionally Omitted.

(c) “City” shall mean the City of New York, its departments and political subdivisions.

(d) “Commencement Date” shall mean the date upon which Parks gives written “notice to proceed” to Licensee, which date shall not be sooner than this License Agreement is registered with the Comptroller.

(e) “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.

(f) “Comptroller” shall mean the Comptroller of the City of New York.

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

(h) “Fixed Equipment” shall mean any property affixed in any way to Licensed Premises, whether or not removal of said equipment would damage Licensed Premises.

(i) “Additional Fixed Equipment” shall mean Fixed Equipment affixed to Licensed Premises subsequent to the date of execution of this License.

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

(i)

(i) "Gross Receipts" shall include all funds or receipts of any kind received by Licensee, without deduction or set-off of any kind, from the operation of the Licensed Premises, from the sale of rides, merchandise, food and beverages, and/or other goods and services at the Licensed Premises, from the licensing of the Licensed Premises for private functions, and from any related 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, as against its sales.. Gross Receipts shall include any orders placed or made at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee in the future either at or outside of the Licensed Premises For example, if Licensee 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 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 Licensed Premises may be made other than at 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.

(iii) 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 14 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, , only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sub-licensees. For clarity, if Licensee receives \$100 in connection with services provided by a subcontracted service and \$30 is due to such service provider under an approved agreement, Licensee shall report \$70 as its Gross Receipts from such transaction.

(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 from all sources from the operation of this License shall be

included in Gross Receipts, provided however that any gratuities transmitted by Licensee 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 customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee 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). Licensee shall 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. “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 customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee 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. Licensee shall 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.

(j) “Licensed Premises” or “Premises” shall mean the area of Willowbrook Park so denoted and described in Exhibit A, attached hereto, and shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping.

(k) “Licensee’s Special Events” shall mean any catered or private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises, excluding “Parks’ Special Events” as defined in Section 13 of this Agreement. Subject to prior written approval from Parks, Licensee may conduct Licensee’s Special Events or other programs at the Licensed Premises. Licensee shall submit to Parks for approval all plans for any Licensee’s Special Events or other programs at the Licensed Premises, and in no event shall the Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks and such closure has been announced to the public at least two (2) weeks

in advance of such activities or events. Licensee must document each Licensee's Special Event via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through Licensee's Special Events must be reported to Parks as Gross Receipts.

(l) "Operating Season" refers to the period commencing on the first Saturday in May in each calendar year during the Term and ending on Columbus Day in such calendar year.

(m) "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as incomplete or outstanding items as provided for in Section 6.14 herein, and that the improvement may be utilized by the public, and if applicable, a temporary certificate of occupancy has been obtained by Licensee.

(n) "Termination Date" or "Expiration Date" shall mean September 14, 2019, unless a New M&O Agreement is entered into prior to such date. In the event a New M&O Agreement is entered into prior to September 14, 2019, the "Termination Date" or "Expiration Date" shall mean five (5) years from the Commencement Date or the last day of any renewal periods that are exercised. The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the "Term". Parks, in its sole discretion, shall have the option to renew this License for up to four (4) additional one-year periods.

(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 the Commencement Date in the immediately following calendar year.

### **TERM OF LICENSE**

**3.1** This License shall become effective upon the Commencement Date and, unless sooner terminated in accordance with this License Agreement shall terminate on the Termination Date, provided that in no event shall the Term of this License Agreement extend past the end of any New M&O Agreement. In the event that Parks exercises its options to renew the License, fees for the option year(s) shall be paid to Parks as indicated in Sections 4.1 and 4.2 herein below.



**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 days written notice 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:

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any federal, State or local law, rule, regulation or order affecting the License 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 thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate. 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 three days 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 the 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 shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City, except as otherwise provided herein.

**3.5** In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 (a) or (b) above, any property of the Licensee 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 agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the 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 Premises.

**3.7** Licensee shall, within 30 days following the expiration or sooner termination of this License, remove all personal possessions from the Premises. Licensee represents that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. 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 within 30 days following the expiration or termination date. Pursuant to Section 4.4 herein, City may seize the Security Deposit to recover such damages in part or in whole. All obligations of Licensee hereunder will remain in effect until Licensee has fully vacated the Licensed Premises and all its property has been removed.

**3.8** If this License is terminated as provided in Section 3.3 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

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

(a) Parks may draw down on the Security Deposit in accordance with Section 4.4; and

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the termination date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement. However, if the Licensed Premises are re-licensed, the amount owed shall be reduced by the amount of the fee received for re-licensing. If the Premises are re-licensed at a higher fee, Licensee shall not be entitled to any payment; and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee 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 of any liability under this License Agreement or otherwise affecting any such liability, and/or re-license 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 of any liability under this License Agreement or to otherwise affect any such liability, provided that Licensee shall not be responsible for any further Alterations upon re-license of the Licensed Premises.

**3.10** No receipt of moneys by Parks from Licensee 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 enforce the payment of fees payable by Licensee hereunder or thereafter falling due, 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 liability hereunder.

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

#### **PAYMENT TO CITY**

**4.1** Licensee shall pay to the City in accordance with Section 4.2 herein, until this License Agreement is terminated, License Fees for each Operating Year as set forth below:

<b><u>OPERATING YEAR NUMBER</u></b>	<b><u>LICENSE FEE</u></b>
1	\$6,000
2	\$6,000
3	\$6,000
4	\$6,000
5	\$6,000
Option Year 1	\$6,500
Option Year 2	\$6,500
Option Year 3	\$6,500
Option Year 4	\$6,500

**4.2** Licensee shall pay the License Fee in one lump sum on or before the last day of each Operating Season during the Term. Each License Fee payment is due and payable on the date specified herein regardless of whether Licensee has received a bill for it from Parks. Fees for partial Years shall be prorated for the portion of the Operating Season that Licensee actually operates.

**4.3** Late charges shall be assessed on any payment which is overdue for more than ten days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month on the sums so overdue (computed

on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of \$1,000.00, due on the 1<sup>st</sup> day of the month must be received no later than the 10<sup>th</sup> day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11<sup>th</sup> day of the month. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, State or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon affixing its signature to this License, Licensee shall provide the City with a certified check in the amount of \$1,625.00, payable to the City of New York, as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

**(b)** If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after five days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

**4.5 (a)** On or before the thirtieth day following each month of each Operating Season, Licensee shall submit to Parks, in the form annexed hereto as Exhibit D or other form satisfactory

to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting all Gross Receipts generated under this License Agreement during the preceding month. Licensee shall also submit a summary report of Gross Receipts for each Operating Season within thirty days of the end of each Operating Season of this License. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the categories for which fees and rates are specified on Exhibit B, the Schedule of Approved Hours and Fees, including, without limitation, the following categories:

Carousel	Receipts from rates and charges made at point of sale for Carousel use by patrons;
Pushcarts	Receipts from rates and charges made at point of sale for items sold from the Pushcarts;
Miscellaneous	All other sources of income realized from Licensee's operation of the Licensed Premises, including without limitation from Special Events.

**(b)** Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

**(c)** Licensee is 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 (if applicable), may be deducted from Gross Receipts or from the compensation due under this License.

**(d)** Licensee agrees to charge no more than \$2.00 per ride for rides on the Carousel. Requests for price increases shall be reviewed by Parks and shall be subject to the approval of the Commissioner, which approval shall not be unreasonably withheld.

**4.6** On or before the thirtieth day following each Operating Year, Licensee shall submit to Parks an income and expense statement in a form approved by Parks pertaining to operations under this License, signed and verified by an officer of Licensee.

**4.7 (a)** Licensee, during the Term of this License, shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Except for transactions occurring via the Pushcarts, 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. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee may deposit revenue from the concession granted hereby into their general bank account, provided that each deposit of such revenue is separately recorded in Licensee's general ledger. All

accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be 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.

(c) Licensee shall furnish to Parks, not later than 30 days following the end of each Operating Season, statements signed and verified by an officer of the Licensee, in such form as may be requested by Parks or the Comptroller, showing in detail the Gross Receipts of the Licensee for each month of the Operating Season and the annual income and expenses of the Licensee. 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 business conducted by the Licensee.

(d) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within 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 required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent in any two out of three consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License.

**4.8** In the event Parks determines that Licensee or his/her employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 through 4.7 hereinabove Licensee may be subject to a charge of two hundred dollars (\$200.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty days of such notice.

**4.9** License fees shall be made payable to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation Revenue Division  
The Arsenal - Room 407  
830 Fifth Avenue  
New York, NY 10065

## **RIGHT TO AUDIT**

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

**5.2** The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee 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.

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

## **REPAIRS AND IMPROVEMENTS**

**6.1** Licensee shall, at its sole cost and expense and in addition to its repair obligations under Section 11 hereof, make the following repairs and improvements at the Licensed Premises:

- (a) Painting and touch-up work on Carousel figurines
- (b) Painting of exterior superstructure of Carousel
- (c) Refinishing of the Carousel deck
- (d) Repairing and painting of benches; power washing concrete; waxing the Carousel deck, and painting columns
- (e) Maintenance and repair of all mechanical issues related to the operation and functionality of the Carousel and its superstructure.

**6.2** Licensee shall perform all repairs in accordance with all federal, State, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. Any and all equipment and materials shall be new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable, and shall assign the



same, if still applicable, to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this License Agreement except to the extent that Licensee retains the obligation to maintain such equipment and materials under this License Agreement. In furtherance of the preceding sentence, as applicable, Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

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

**6.4** Unless otherwise provided, Licensee shall choose the means and methods of completing any necessary repairs unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Licensed Premises or to persons or property or will not produce high grade and quality results.

**6.5** No temporary storage or other ancillary structures and staging areas may be erected and maintained without a license obtained from Parks' Construction Division, License Office.

**6.6** Licensee may not cut down, replant, or remove any trees from the Licensed Premises without the prior written approval of Parks' Forestry Division.

**6.7** Neither Parks, nor the City, its agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City from showing that any repairs do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 6.7 signed by the Commissioner or his authorized representative.

**6.8** Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee to remove its equipment (other than Additional Fixed Equipment to which the City has taken title) and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee at

the termination or expiration of this License Agreement. However, Licensee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

**6.9** Prior to the commencement of any construction Licensee shall have an asbestos inspection performed on the existing structures at the Licensed Premises. In the event that asbestos removal is necessary, Licensee shall, at its sole cost and expense, remove the asbestos according to City, State and federal regulations.

### **ALTERATIONS**

**7.1** (a) Licensee may alter 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) 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; and

(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.

(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.

**7.2** Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by Commissioner in the Commissioner's sole discretion at the Licensed Premises at any time during the Term of this License provided that such work is reasonably necessary to be performed during the Term of this License. Licensee agrees 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 best 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 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' construction, 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 be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for any claims, damages, and injury resulting from its work hereunder, except to the extent such claims, damages and injury is caused by the negligent or intentional tortious acts or omissions of Licensee.

## **FIXED AND EXPENDABLE EQUIPMENT**

**8.1** Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment necessary for the 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 date of commencement of this License. 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 be the responsibility of Licensee to remove such Additional Fixed Equipment and restore the Licensed Premises to the satisfaction of the Commissioner at Licensee's sole cost and expense after the expiration or sooner termination of this License.

**8.3** Licensee shall supply at its own cost and expense 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 must 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 shall remain in Licensee 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 Section 8 shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. 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.

## **UTILITIES**

**9.1** Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises. Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain, all utilities, service lines, meters and supplies of power necessary for the proper operation of this License and pay all utility costs. Utilities, as described in this Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, and telephone charges. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. Licensee shall contract directly for public telephone services at Licensed Premises. If requested, Parks shall use reasonable efforts to assist Licensee in obtaining utilities for the Licensed Premises. Notwithstanding anything to the contrary herein, Parks shall continue to be responsible for water and sewer charges for the public restrooms located at the Premises.

## **OPERATIONS**

**10.1** Licensee, at its sole cost and expense, shall operate this License for the use and enjoyment of the general public during such seasons and times of day, and in such manner as the Commissioner shall prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. The Commissioner retains the right, throughout the Term of this License, to approve or disapprove (which approval shall not be unreasonably withheld) any and all rates, fees and prices to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License, however, if the Commissioner disapproves of such rates, fees or prices, the Commissioner shall provide Licensee with a written statement of the basis for said disapproval. The approved rates, fees, and prices for the commencement of operations hereunder is set forth on Exhibit B, the Schedule of Approved Hours and Fees. Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary personnel and consumable equipment to operate, manage and maintain the Carousel, Carousel Building and the Pushcarts and the entire Licensed Premises, and to conduct Special Events at the Licensed Premises, subject to the prior approval of the Commissioner.

**10.2** Licensee shall provide one (1) non-motorized food cart and one (1) non-motorized souvenir cart of a professional quality and design subject to Parks' prior written approval. The Pushcarts shall be stationed and operated only at locations authorized by Parks. The design and color of the carts, umbrellas, canopies and other equipment attached to the carts shall be subject to the approval of the Commissioner or his designee. Licensee shall repair and/or replace such items as Parks deems necessary.

**10.3** Licensee shall affix a Permit Decal issued by Parks to each Pushcart. Licensee must also obtain a permit from the New York City Department of Health and Mental Hygiene ("DOHMH") for each food Pushcart and a DOHMH vendor license for each person designated as an operator of a food Pushcart. Licensee may not operate the food Pushcart until these permits and licenses have

been obtained and presented to Parks. If the food Pushcart is found to be operating at the Licensed Premises and Licensee has failed to obtain the necessary licenses and permits, Licensee and the food Pushcart operators may be subject to fines, liquidated damages in accordance with Section 4.9 hereof and/or confiscation of merchandise and the food Pushcart.

**10.4** Licensee shall equip the Licensed Premises with garbage receptacles, which must be present at all times. Licensee will be responsible for keeping the area within 50 feet of the Licensed Premises free and clean of litter.

**10.5** Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all its operations at the Licensed Premises, weather permitting, for such days and hours as the Commissioner shall reasonably approve, but which shall be at least those set forth on Exhibit B, the Schedule of Approved Hours and Fees. At a minimum, Licensee shall operate Carousel and Pushcarts during the approved hours during the Operating Season. Licensee's employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner. In regulating the hours of operation, the Commissioner may consider the hours of operation of other similar Parks facilities, the nature of the community and the environs of the concession, Parks' rules and regulations of operations, public health and safety, and other similar considerations. Annexed hereto and made a part hereof as Exhibit B is the Schedule of Approved Hours and Fees. Any changes in such Approved Hours and Fees at any time during the term of this License must be approved in advance in writing by the Commissioner. Should Licensee choose not to charge the maximum allowable fees and rates, this shall in no way be interpreted as a waiver of Licensee's right to charge such maximum allowable fees and rates at any other time.

**10.6** **Intentionally omitted.**

**10.7** Licensee shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable rules, laws and regulations. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any Certificates of Occupancy and Permits of Assembly, as issued.

**10.8** Licensee shall submit to Commissioner for his prior written approval, not less than sixty days before the first day of each Operating Season, schedules for the coming Operating Season concerning operating days and hours, and proposed schedules of fees and rates for the services and products to be sold under this License during the forthcoming Operating Season. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the current approved schedule of operating days, hours, fees and rates.

**10.9** **Intentionally omitted.**

**10.10** Licensee warrants that all services provided, merchandise sold and vending operations provided pursuant to this License shall be of high grade and good quality. Licensee shall submit to Commissioner a list or schedule of the articles to be offered for sale pursuant to this License and the prices to be charged for each article, and Licensee shall offer for sale only such articles and at such prices as have been approved in writing by Commissioner, which approval shall not

be unreasonably withheld. The schedule of prices approved by Commissioner shall be printed and displayed at the expense of Licensee in a place and manner designated by Commissioner. Licensee shall adequately maintain inventory control to ensure a sufficient supply of merchandise.

**10.11** Licensee is prohibited from selling any beverages in glass bottles. All beverages must be in non-glass, shatter-proof containers. Licensee shall also not use any polystyrene packaging or food containers in connection with services or merchandise offered under this License.

**10.12** An officer of the Licensee shall personally operate this License or employ an operations manager ("Manager") possessing appropriate qualifications to manage operations at the Licensed Premises in a manner which is satisfactory to Commissioner. The 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 in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sub licensee whenever reasonably demanded by Commissioner. In addition, since maintenance and operation of the Carousel requires knowledgeable hands-on application, the principal knowledgeable operators shall be physically present at the site at all times to operate the Carousel.

**10.13** Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

**10.14 (a)** Licensee shall, 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:

- (i) collecting and safeguarding all monies generated under this License;
- (ii) maintaining the Licensed Premises;
- (iii) conducting and supervising all activities to be engaged in at the Licensed Premises including but not limited to the provision of security at the Licensed Premises; and
- (iv) providing first-aid to staff and visitors.

(b) For purposes of this subparagraph, the word "personnel" means each employee, independent contractor, and volunteer of Licensee 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, and for establishing procedures for doing so, all such procedures to comply with all Federal, State and City laws, including, but not limited to, the following:

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

- (A) Substantiating credentials;
- (B) Conducting criminal background checks; and
- (C) Conducting 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 the 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 National Sex Offender Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

**10.15** After obtaining the prior written approval of Parks , Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary for its operations under this License. Licensee shall operate and play such sound equipment and music only at a sound level acceptable to the Commissioner. Licensee



shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as they may require for such music or music programming.

**10.16** Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the prior written approval of the Commissioner.

**10.17** Licensee shall comply with all City, state and federal laws relating to access for persons with disabilities and shall provide access to the Licensed Premises to disabled members of the public. This accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall include in its advertising and promotion program, provided for in Section 10.26 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

**10.18** Licensee shall, at its sole cost and expense, maintain total security at the Licensed Premises for twenty-four hours per day. Such security system may be an electronic security system, a twenty-four hour guard, or both. No grant of authority for Licensee to establish living quarters on the Licensed Premises is provided by this obligation. Licensee shall secure the Licensed Premises, the Pushcarts, and any other equipment or property every evening. The Pushcarts shall be secured and stored on Premises.

**10.19** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring at 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 may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a staff person to handle all such claims, including all claims for loss or damage 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.

**10.20** Licensee shall provide first-aid services by providing at least one staff member on duty, at all times that the Carousel is open to the public, who is certified by the American Red Cross or other duly authorized agency as having successfully completed a course in Advanced First-Aid training.

**10.21** Licensee shall promptly notify Parks' personnel 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.

**10.22** Licensee shall cooperate with Parks in conducting community outreach programs and in providing use of the Licensed Premises without charge for programs conducted by or arranged for

by Parks. Parks shall consult with Licensee in an effort to schedule such events at times mutually agreeable to Licensee and to Parks.

**10.23** Licensee shall maintain close liaison with Parks' Enforcement Patrol, the New York Police Department, and other police officials, and cooperate with all efforts to remove illegal vendors from the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

**10.24** The Commissioner shall have the right to approve the days and times on which deliveries to Licensee may be made. Such approved times shall not be unreasonable nor interfere with normal business operations.

**10.25** Licensee shall establish an advertising and promotion program. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter except advertising matter which is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals or conduct. Licensee may release news items to the media as it sees fit. If the Commissioner in his discretion, however, finds any releases to be unacceptable, then Licensee shall cease or alter such releases as directed.

(a) Licensee may, subject to the prior approval of the Commissioner as to design, and distribution, print or arrange for the printing of advertising, signs, programs or brochures containing advertising matter, except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, 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. Parks agrees to use its reasonable efforts to assist Licensee with obtaining authorizations from other agencies having jurisdiction for posting non-proprietary signs designed to inform the public of the operation of the Licensed Premises conducted at the Licensed Premises. Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the prior written approval of the Commissioner.

(b) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License, at locations determined through consultation with the Licensee.

**10.26** (a) Any sign posted by Licensee at the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner, shall be appropriately located, and shall state that the Licensed Premises is a New York City municipal concession operated by Licensee. Licensee is prohibited from placing advertisements on the exterior of any building, structure or Pushcart.

(b) The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Signage shall also comply with ADA standards. Under no circumstances shall Licensee be permitted to place advertisements on the exterior of the Licensed Premises. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is 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, non-tobacco smoking products or electronic cigarette advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all 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. Any prohibited material displayed or placed shall be promptly removed by Licensee upon written notice from Parks at Licensee's sole cost and expense.

**10.27** Licensee shall 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. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior approval.

**10.28** The selling and/or advertisement of alcoholic beverages, tobacco products, non-tobacco smoking products, or electronic cigarettes is strictly prohibited. Smoking anywhere on the Licensed Premises is strictly prohibited. Licensee shall adhere to and enforce the provisions of this Section.

**10.29** Licensee shall meet all applicable Fire Department codes and shall provide supplemental equipment for fire protection, such as alarms, extinguishers, hoses and hose reels.

**10.30** Licensee shall obtain the written approval of Parks prior to entering into any marketing or sponsorship agreement with respect to operations at the Licensed Premises. In the event that Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests.

**10.31** Licensee shall pay all taxes applicable to its operations under this License Agreement.

**10.32** Licensee shall comply with all terms of this License Agreement. Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion. Violations of the terms of this License Agreement may result in the assessment of liquidated damages set forth in the below schedule which, if not paid promptly, may be deducted from Licensee's Security Deposit. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License Agreement, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to

any other remedies available to it, assess liquidated damages and/or suspend or terminate this License Agreement. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

<b>Provision</b>	<b>Liquidated Damages per Occurrence</b>
Unauthorized Menu Items or Merchandise	\$150
Missing or Unauthorized Price List	\$250
Overcharging	\$350
Expanding	\$350
Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Pushcart Leaking Fluids	\$350
Pushcart Obviously Damaged or in Poor Repair	\$250
Graffiti or Dirty Pushcart	\$350
Unauthorized Advertising	\$350
Roving or Vending at Unauthorized Location	\$250
Improper Storage	\$350
Graffiti, Dirty Pushcart or Umbrella	\$350
Sticker Expired or Not Displayed	\$250
Vending without valid DOHMH Mobile Food Vendor's License	\$350
Vending without valid DOHMH Mobile Food Unit License	\$350
311 sign not displayed	\$250
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Unauthorized Vehicular Activity	\$350

If Licensee fails to pay the assessed liquidated damages to Parks within ten days of receipt of notice, this License may be suspended or terminated. In addition, Parks may seize Licensee's Security Deposit, described in Section 4.3(a), to cover the amounts of any outstanding payments for liquidated damages.

**Procedure for Appeals of Assessments To Concession License Violations**

If an assessment is received for one of the above violations, there is a process by which the assessments 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 Licensee 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.

**10.33** Licensee shall maintain a high level of safety at the Licensed Premises and shall follow a maintenance schedule and safety precautions approved by Parks. Licensee shall comply with all national safety guidelines and federal, state, and City laws, rules and regulations related to the operation, maintenance and management of the Carousel.

**10.34** Licensee may sell the items set forth on Exhibit B from the Pushcarts at the prices set forth on Exhibit B, or lower prices. In no event may Licensee sell items promoting musicians, entertainers, sports figures, cartoon characters, commercial products, or non-park related events.. Licensee should be aware 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 the Licensee wants to sell merchandise that uses the City's trademarks, Licensee shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at this concession will result in the immediate termination of this License and seizure of the security deposit.

**10.35** Intentionally omitted.

**10.36** Should the Commissioner decide that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner or his/her representative may in writing order Licensee 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 satisfactory to Commissioner within ten days from the mailing of said notice, notwithstanding any other provisions herein, then Commissioner may terminate this License.

**10.37** Should Commissioner, in his sole judgment, decide 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. If 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 such condition shall be corrected. Commissioner, in his sole discretion, may extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate. During any period where the

Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition.

**10.38** This License does not grant Licensee exclusive rights to sell in the park in which the Licensed Premises are located. Moreover, Parks may grant other permits to vendors to sell the same or similar items authorized under this License within the same park in which the Premises are located. Licensee acknowledges and understands that Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Premises.

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

### **MAINTENANCE, SANITATION AND REPAIRS**

**11.1** Licensee shall, at its sole cost and expense (or through arrangements with third parties) and to the satisfaction of Commissioner, put, keep, repair and preserve the Licensed Premises in good and safe condition and in accordance with industry standards, including the Carousel, the Pushcarts, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, vaults, gutters, curbs, fixtures, buildings and structures, paths, driveways, walkways, trees, and perimeter fences. During the Operating Year, Licensee shall at all times keep the Licensed Premises clean, litter free, neat and, with respect to the food service operations, fumigated, disinfected, deodorized and in every respect sanitary. During the Operating Year, Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the perimeter of the Licensed Premises), and collect and remove all litter, debris, snow and garbage therefrom. Licensee shall repair and maintain in good working order any and all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment. To ensure Parks' satisfaction that Licensee is in compliance with this paragraph Licensee shall provide Parks with full and free access to the Licensed Premises.

**11.2** Licensee shall maintain the Licensed Premises to the satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner. In part to secure Licensee's obligation to maintain and repair the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4(a)

**11.3** Licensee acknowledges and agrees that Licensee shall maintain and clean the horticulture within the Licensed Premises according to Parks standards.

**11.4** At Parks request, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and

all Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee during the forthcoming Operating Year.

**11.5 (a)** Licensee shall provide adequate waste receptacles approved by Parks at the Licensed Premises. During the Operating Season(s), all waste, garbage, refuse, rubbish and litter which collect upon the Licensed Premises and within fifty feet of the Licensed Premises, without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises on a daily basis by a private carter, all at the Licensee's sole cost and expense. In performing its duties under this section. Licensee shall comply with all City, State, and Federal regulations regarding recycling. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval.

**(b)** Where feasible, Licensee shall provide for its patrons' use appropriately sized and well-positioned blue plastic recycling bins or receptacles for bottles and cans, and green bins or receptacles for papers, catalogs and magazines. These containers shall be properly labeled with recycling logos and the containers, and the areas around them, shall be maintained in a clean, sanitary, and graffiti-free state.

**(c)** Licensee shall properly bundle and/or separate, as required, for pickup pursuant to City, State, and federal law, all corrugated cardboard, magazines and catalogs, newspapers, high grade office paper and envelopes, computer paper, phone books, paper bags, cardboard boxes, pizza boxes, non-styrofoam egg cartons, milk and juice cartons, aluminum products (including foil and trays), metal cans, plastic and glass bottles, detergent bottles, glass jars, milk jugs, metals (pans, irons), aerosol cans, wire hangers, and paint cans. These recyclables must be rinsed or rid of all food products, as necessary.

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

**11.7** At its sole cost and expense, Licensee shall keep all signs, buildings, and structures in good condition and free of graffiti and shall promptly remove any and all graffiti which may appear on signs, buildings and structures on the Licensed Premises.

**11.8** Licensee shall maintain, restore, and repair the Carousel and Carousel Building so as to maintain the Carousel and Carousel Building in a first class condition, preserving its character and significance. Maintenance, restoration and repair work shall include, but not be limited to, the following: mechanical and external aspects of the Carousel and its figures (horses and chariots), carousel organ, inner facade panels, engine and mechanical system, computerized system, security and alarm system, gates, ticket booth, repainting wooden ceiling, lighting maintenance, staining, repairing and/or replacing benches, repainting ticket booth, repairing roof, including replacing building paper and shingles, roof gutters, and repainting roof tower. Maintenance shall also include horticulture and cleaning of the Licensed Premises and surrounding area, including all walkways, trees, gates, vegetation and fences, according to Section 11 and Parks standards. Any restoration work performed on Carousel horses or other figures must preserve the character and historical significance of the horses. Licensee may not remove the horses or figures from the park,

except for as necessary for repairs and maintenance. Licensee may not make, nor cause to be made, molds of the Carousel horses or figures or replicate the horses or figures in any way for sale or auction. The horses and figures remain the property of Parks at all time.

**11.9** Under no conditions shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's improvements or Alterations, or with any other of Licensee's rights or duties under this License, without the express written permission of Parks. Moreover, Licensee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Licensee's rights or duties detailed herein. Attachments to trees, such as lights, are not permitted.

**11.10** Licensee shall arrange for regular pest control inspections and extermination at least as often as deemed necessary by Parks. To the extent that Licensee applies pesticides to any property owned or leased by the City, 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.

**11.11** For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with State Department of Environmental Conservation ("DEC") and register such tanks with the City's Department of Environmental Protection ("DEP"). Licensee shall assume all registration and update costs. Licensee shall keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randall's Island, New York. Licensee shall 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.

**11.12** In the event of a drought, Licensee shall comply with all DEP directives and restrictions.

**11.13** Licensee shall provide safe lighting throughout the Licensed Premises and replace lamps after lamp outages.

## **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.

**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.



### **RESERVATION FOR PARKS SPECIAL EVENTS**

**13.1** For the purposes of this Section 13 the term "Parks' Special Event(s)" shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks' Special Events and unanticipated eventualities and emergencies at the Licensed Premises. 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 which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Section 13 shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event, and provided further that Parks shall not authorize or permit Parks' Special Events more frequently than once per calendar month without the prior written approval of Licensee, which shall not be unreasonably withheld. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee from access to the Licensed Premises. All third parties sponsoring or promoting Parks' Special Events shall be required to obtain insurance naming Licensee as an additional insured.

**13.2** Parks agrees to notify any third party operator or sponsor of Parks' Special Events of Licensee's access rights to the Licensed Premises and to provide same with the name and telephone number of Licensee's manager.

### **PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

**14.1** 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 (which shall not be unreasonably withheld) by submitting a written request including proposed assignment documents as provided herein. The Commissioner may request any additional information he deems 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 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 may be made under any circumstance if such sale will result in a

change of control of Licensee violative of the intent of this Section 14, without the prior written consent of Commissioner, which shall not be unreasonably withheld.

**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 stating the financial net worth of the proposed assignee or sublicensee, a certification from the proposed assignee or sublicensee that its financial net worth is sufficient to comply with Licensee's obligations under this License Agreement, and a certification from the proposed assignee or sublicensee 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. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

**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.

### **PARKS CONSTRUCTION**

**15.0** Parks reserves the right to perform safety or maintenance work at its discretion on or throughout the Licensed Premises at any time during the Term of this License, provided that such work is reasonably necessary to be performed during the License Term. Licensee agrees 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 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. Licensee shall be responsible for security of all Licensee's property 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 negligent or intentional tortious acts or omissions of Licensee.

### **COMPLIANCE WITH LAWS**

**16.1** Licensee shall comply with and cause its employees and agents 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.

### **NON-DISCRIMINATION**

**17.1** With respect to all employment decisions, Licensee shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation.

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

### **NO WAIVER OF RIGHTS**

**18.1** No acceptance by Commissioner of any compensation, including services, 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.

### **RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

**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 harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been negligent, other than such claims as may arise solely out of the gross negligence or intentional tortious acts of the City, its officials, agents, employees or representatives) and/or Licensee’s failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Licensee, the City and its officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

**19.3** For purposes of Sections 19 and 20 hereof, the term “operations under this License” shall include any operations ancillary to or connected with Licensee’s operations pursuant to this License.

## **INSURANCE**

**20.1** (a) Throughout the Term Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the 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) 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 0001, 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 2026, and the limits for the City shall be no lower than Licensee's. "Blanket" or other forms are acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 2026.

**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 all buildings, structures, equipment and fixtures on the Licensed Premises ("Concession Structures"), whether existing at the Commencement Date or built at any time before the Termination Date. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (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) The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “all risk” or “special perils form” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

(c) In the event of any loss to any of the Concession Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, 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** (a) In the event the Licensee enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Licensee shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, cleanup costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor’s operations at the Premises.

(b) If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000), and provide coverage for the Licensee as Named Insured or Additional Insured and the City, together with its officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Licensee’s. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor’s work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

**20.7** Licensee represents and warrants that its operations at the Licensed Premises will not involve asbestos, lead, PCBs or any other hazardous materials, unless required under this License Agreement.

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

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

(c) Wherever this article requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that 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.

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

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

**20.9** (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 (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) 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 C 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 License Agreement. 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.

**20.10** (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 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. If the Commissioner authorizes a self-insured retention, the Licensee must allow the City to pay the self-insured retention upon the Licensee's failure to pay. If the City pays such self-insured retention, the City may deduct the self-insured retention from the Security Deposit.

(c) 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 twenty (20) days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage,



occurrence, or accident, and the identity of the persons or things injured, damaged or lost. 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.

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

(e) 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.

(f) 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.

(g) 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.

(h) 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, Licensee shall ensure that such entity also names the City, including its officials and employees, as additional insureds (with coverage for Commercial General Liability Insurance) at least as broad as ISO form CG 20 26).

(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, 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.

## **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 the City, its officials and employees 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 public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **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

**(iii)** 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.

(iv) 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 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 of 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.

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

**23.1** This License 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 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.

#### **WAIVER OF TRIAL BY JURY**

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

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

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

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

#### **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.

#### **EMPLOYEES OF LICENSEE**

**26.0** All experts, consultants, independent contractors, specialists, trainees, employees, servants and agents 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.

### **INDEPENDENT STATUS OF LICENSEE**

**27.0** 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 or employees of the City, or of any department, agency, or unit thereof, 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.

### **CREDITOR-DEBTOR PROCEEDINGS**

**28.0** In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

### **CONFLICT OF INTEREST**

**39.0** 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.

### **PROCUREMENT OF AGREEMENT**

**30.1** 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.

**30.2** 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.

#### **NO CLAIM AGAINST OFFICIALS, OFFICERS, AGENTS OR EMPLOYEES**

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

#### **ALL LEGAL PROVISIONS DEEMED INCLUDED**

**32.0** Each and every provision of law required to be inserted in this License shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

#### **SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

**33.0** 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.

#### **JUDICIAL INTERPRETATION**

**34.0** 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.

#### **MODIFICATION OF AGREEMENT**

**35.0** This License 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 may be modified from time to time by agreement in writing, but no modification of this License 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.

### **NOTICES**

**36.0** Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice 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, or to any other address that Licensee shall have filed with Commissioner.

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

**37.0** Licensee and the individual executing this License Agreement on behalf of Licensee each 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.

### **MISCELLANEOUS**

**38.0** 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 to be signed and sealed on the day and year first above written.

**NEW YORK CITY DEPARTMENT OF GREENBELT CONSERVANCY, INC.  
PARKS & RECREATION**

By: \_\_\_\_\_  
Alexander Han  
Director of Concessions

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

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

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

**APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY**

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

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this \_\_\_\_\_ day of \_\_\_\_\_ 2019 before me personally came Alexander Han to me known, and known to be the Director of Concessions of the New York City Department of Parks & Recreation, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in 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 \_\_\_\_\_ 2019 before me personally came \_\_\_\_\_, who, being duly sworn by me, did depose and say that s/he executed the foregoing instrument and acknowledged that s/he executed the same for the purposes mentioned therein.

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Notary Public

**EXHIBIT A**

**SITE PLAN OF LICENSED PREMISES**



## **EXHIBIT B**

### **SCHEDULE OF APPROVED HOURS AND FEES**

#### **OPERATING HOURS:**

Weather permitting; the Carousel shall be open to the public during the following days and hours:

May (beginning with the first Saturday of the month): 11:00AM -5:45 PM , Friday through Sunday (plus Memorial Day)

June: 11:00AM -5:45 PM, Wednesday through Sunday

July: 11:00AM -5:45 PM , all 7 days

August: 11:00AM -5:45 PM , all 7 days

September: 11:00AM -5:45 PM , Wednesday through Sunday

October (through Columbus Day): 11:00AM -5:45 PM , Friday through Sunday (plus Columbus Day)

The Carousel may be open at other times with the prior written approval of the Commissioner. During such time, Licensee shall provide continuous rides on the Carousel for the public and shall conduct concession sales from the Pushcarts, as needed. Licensee may also program special events outside of the open hours by obtaining special events permits and may schedule private functions at times when public or special events are not scheduled, subject to the prior written approval of the Commissioner. The Carousel and Carousel Building shall be closed at all other times.

#### **PRICING**

##### **Rides on Carousel**

The price per ride for each member of the general public shall be \$2.00. No increase in the price per ride may be made without the prior written consent of the Commissioner. Discounts and free rides may be granted only with the approval of the Commissioner.

<b>SALE ITEMS</b>	
Airplanes / Birds / Gliders	\$1.00
Animals	\$2.00
Bandanas	\$2.00
Bendable Animals	\$1.00
Bears	\$3.00
Bubbles	\$1.00

<b>Camera</b>	\$9.00
<b>Coloring Book – Large/Black</b>	\$7.00
<b>Coloring Book – Small/White</b>	\$5.00
<b>Compass</b>	\$2.50
<b>Ducky Squirts</b>	\$1.00
<b>Fish Squirts</b>	\$2.00
Flags	\$1.00
Frisbee	\$2.50
Kaleidoscope	\$0.50
Keychain	\$3.50
<b>Pinwheels</b>	\$2.00
<b>Prehistoric Animals</b>	\$1.50
Snakes / Small	\$0.25
Snakes / Large	\$2.50
<b>Staten Island Post Card - each</b>	\$0.50
Staten Island Post Card Set	\$3.00
T-Shirts 6-8 5-6 4T 2T 18/12/6 mos	\$7.75
Wiggle Snakes	\$1.00
Wooden Trucks	\$1.50
<b>FOOD</b>	
Hot Chocolate	\$1.00
Coffee	\$1.00
Juice	\$2.00
Hot Dogs	\$2.00
Beef Sausage	\$2.50
Knishes	\$2.50
Popcorn	\$2.00
Hot Pretzels	\$2.00
Soda	\$1.25
Water	\$2.00
Chips	\$ .50
Ice Cream	\$2.00
Granola Bar	\$1.00
Fruit Snack	\$1.00

The Licensee warrants that all goods shall be pure and of good quality. Any modification of the goods or the prices to be charged therefore is subject to the prior written approval of the Commissioner. A price list of the goods shall be printed, framed, and displayed at the Licensee's expense at each Pushcart in a manner approved by the Commissioner. Licensee shall obtain, maintain, and display appropriate Department of Health permits and vendor identification tabs. All employees shall at all times be in clean uniforms of a style and color approved by Parks.

## **EXHIBIT C**

### **CERTIFICATES OF INSURANCE**

#### **Instructions to New York City Agencies, Departments, and Offices**

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

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

-- OR --

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

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

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

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

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

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_



**EXHIBIT D:**

**MONTHLY REPORT OF GROSS RECEIPTS**

**GREENBELT CONSERVANCY, INC.**

**R30-CL, SV**

THIS REPORT REPRESENTS GROSS RECEIPTS RECEIVED  
THROUGH THE LAST DAY OF MONTH

<b>MONTH</b>	MM/YYYY
<b>REVENUE CATEGORY</b>	
- FOOD SALES	\$
- BEVERAGES SALES	
- CATERING	
- MISCELLANEOUS (DESCRIBE)	
<b>TOTAL GROSS RECEIPTS:</b>	\$
<i>TOTAL AMOUNT OF GRATUITIES EXCLUDED FROM GROSS</i>	\$
<i>TOTAL AMOUNT OF SALES TAXES EXCLUDED FROM GROSS</i>	\$

***I hereby certify the above statement to be true and correct.***

Certified correct:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

## **EXHIBIT E**

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

#### **Introduction and General Provisions**

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](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 Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### **Applicability, Accrual, and Use**

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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 PSLI does not apply to any of the following:

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

## Records

An employer must retain records documenting its compliance with the PSLL 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 PSLL.

## Enforcement and Penalties

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

## **EXHIBIT F**

### **BACKGROUND CHECKS RIDER**

1. Recruitment; Screening. 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.
2. Convictions: 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: 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: 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: 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, 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: 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 Licensee is hiring for positions where certain convictions or violations are a bar to employment in that position under Law, Licensee may ask questions about those convictions or violations.

Notwithstanding any other provision of this Section, if Licensee is hiring for positions requiring licensure, including positions such as interns and apprentices for such licensed positions (e.g. prospective attorneys), 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, Licensee shall provide for the review by a supervisor of a decision not to hire based on prior criminal convictions.

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



**Alyssa Cobb Konon**  
Deputy Commissioner  
Planning and Development

T 212.360.3402

E alyssa.cobb@parks.nyc.gov

**City of New York  
Parks & Recreation**

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

## MEMORANDUM

**To:** Honorable Eric Adams, Brooklyn Borough President  
Laura Singer, District Manager, Brooklyn Community Board #15

**From:** Glenn A. Kaalund, Senior Project Manager

**Subject:** Notice of a Joint Public Hearing on February 11, 2019, Intent to Award as a Concession for the Operation and Maintenance of a Parking Lot at Manhattan Beach Park, identified as Block 8760, Lot 485, in the Borough of Brooklyn, to City University of New York, Kingsborough Community College


**Date:** January 25, 2019

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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, February 11, 2019 at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, in the Borough of Manhattan, commencing at 2:30 p.m. relative to:

**INTENT TO AWARD** as a concession for the operation and maintenance of a parking lot at Manhattan Beach Park, identified as Block 8760, Lot 485 in the Borough of Brooklyn, located at Oriental Boulevard and Irwin Street, for one (1) seven-season term to City University of New York, Kingsborough Community College. Compensation to the City will be as follows: **Operating Season 1** (Sept. 9, 2019 - May 12, 2020): \$114,000; **Operating Season 2** (Sept. 14, 2020 – May 10, 2021): \$114,000; **Operating Season 3** (Sept. 13, 2021 - May 9, 2022): \$114,000; **Operating Season 4** (Sept. 12, 2022 - May 8, 2023): \$114,000; **Operating Season 5** (Sept. 11, 2023 - May 12, 2024): \$114,000; **Operating Season 6** (Sept. 9, 2024 – May 11, 2025): \$114,000; **Operating Season 7** (Sept. 15, 2025 – May 10, 2026): \$114,000.

A draft copy of the Permit Agreement may be reviewed or obtained at no cost, commencing Friday, February 1, 2019, through Monday, February 11, 2019 between the hours of 9am and 5pm, excluding weekends and holidays at the New York City Department of Parks and Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

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

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



(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) )

<b>AGENCY:</b> New York City Department of Parks and Recreation		<b>RECOMMENDED CONCESSIONAIRE</b>		<b>CONCESSION TITLE/ DESCRIPTION:</b>	
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A		Name: <u>City University of New York, Kingsborough Community College</u> Address: <u>2001 Oriental Boulevard, Brooklyn, NY 11235</u> Telephone # <u>212-794-5385</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3893536</u> Not-for-Profit Organization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Operation and Maintenance of a <u>Parking Lot at Manhattan Beach Park, Brooklyn</u>  CONCESSION I.D.# <u>B251-PL</u>	
LOCATION OF CONCESSION SITE(S*) Address <u>Manhattan Beach Park, Oriental Boulevard at Irwin Street</u> <input type="checkbox"/> N/A Borough <u>Brooklyn</u> C.B. <u>15</u> Block # <u>8760</u> Lot # <u>485</u> <small>*Attach additional sheet</small>					
<b>SELECTION PROCEDURE</b> (*CCPO approval of CRFA required) <input type="checkbox"/> Competitive Sealed Bids <input type="checkbox"/> Competitive Sealed Proposals*    ( <input type="checkbox"/> FCRC approved Agency request to deviate from final recommendation of the Selection Committee on __/__/__.) <input checked="" type="checkbox"/> Different Selection Procedure: * ( <input checked="" type="checkbox"/> Sole Source Agreement <input type="checkbox"/> Other _____ ) > FCRC approved different selection procedure on <u>08/08/2018</u> . <input type="checkbox"/> Negotiated Concession*					
<b>CONCESSION AGREEMENT TERM</b>  Initial Term: Operating Season 1: (Sept. 9, 2019 - May 12, 2020): \$114,000; Operating Season 2 (Sept.14, 2020 – May 10, 2021): \$114,000; Operating Season 3 (Sept. 13, 2021 - May 9, 2022): \$114,000; Operating Season 4 (Sept. 12, 2022 - May 8, 2023): \$114,000; Operating Season 5 (Sept. 11, 2023 - May 12, 2024): \$114,000; Operating Season 6 (Sept. 9, 2024 – May 11, 2025): \$114,000, Operating Season 7 (Sept. 15, 2025 – May 10, 2026): \$114,000  Renewal Option(s) Term: <u>None</u>  Total Potential Term: <u>7 Seasons *</u>  <input type="checkbox"/> * >20 years – FCRC unanimously approved term on __/__/__			<b>ANNUAL REVENUE</b> (Check all that apply) ( <input type="checkbox"/> Additional sheet ( <input type="checkbox"/> s) attached)  <input checked="" type="checkbox"/> Annual Fee(s) <u>\$114,000</u>  <input type="checkbox"/> % Gross Receipts _____%  <input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____ % of Gross Receipts  <input type="checkbox"/> Other _____		
<b>NOTIFICATION REQUIREMENTS</b> Subject concession was awarded by CSB or CSP. <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO  If YES, check the applicable box(es) below: <input type="checkbox"/> The subject concession is a Significant Concession and the Agency 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. <input type="checkbox"/> 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. <input type="checkbox"/> 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: <input checked="" type="checkbox"/> The Agency certifies that each affected CB/BP received written notice by <u>6/29/2018</u> , which was at least 40 days in advance of the FCRC meeting on <u>2/11/2019</u> at which the agency sought and received approval to use a different selection procedure. <input type="checkbox"/> 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 __/__/__. <input type="checkbox"/> 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 02/11/2019.

☐ 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)**

Parks Permit #B251-PL for the operation and maintenance of a Parking Lot at Manhattan Beach Park, Brooklyn, and as identified as Block 8760, Lot 485, in the Borough of Brooklyn.

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

**A. SELECTION PROCEDURE**

☒ Sole Source

☐ Other *Describe: Different Procedure*

**B. NEGOTIATIONS**

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

City University of New York, Kingsborough Community College ("KCC") agreed to fees of \$114,000 per season and to maintain the price of parking permits for its students and faculty at the same level as it has since 2007. The parking fees for KCC students and faculty will be \$55 per semester or \$110 for the Operating Season. A sufficient number of parking spaces will be available for the general public at a daily rate of ten dollars (\$10). Parking permits prices may be amended only with Parks' prior written approval.

**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:**

Manhattan Beach is serviced by a large parking facility year-round. From mid-May through mid-September, the parking facility at Manhattan Beach is operated pursuant to a concession license agreement with City Ice Sports, Inc. That agreement was awarded through a competitive solicitation process (Request for Proposals). Although the park is heavily used by park patrons from mid-May through mid-September, the attendance drops significantly after Labor Day. The parking lot therefore is available for KCC student and faculty parking, and for the general public.

KCC, located in the heart of Manhattan Beach on Coney Island, has been a valued and responsible operator of the Manhattan Beach parking facility for many years, including the three recent four-season sole source agreement terms. The existing Agreement expires May 12, 2019. Although there are other operators that conceivably could be interested in operating this concession during the academic year, a competitive proposal process for this parking lot is not in the City's best interests; KCC sells its parking permits to students and faculty for \$110 per year (\$55 per semester) and offers parking to the general public for \$10 per day. A private operator's rates most likely would place parking privileges beyond the economic means of many students. By providing parking for students, KCC also is alleviating street parking congestion in this residential neighborhood.

KCC will compensate the City as follows:

Operating Season 1: (Sept. 9, 2019 - May 12, 2020):	\$114,000;
Operating Season 2 (Sept.14, 2020 – May 10, 2021):	\$114,000;
Operating Season 3 (Sept. 13, 2021 - May 9, 2022):	\$114,000;

Operating Season 4 (Sept. 12, 2022 - May 8, 2023): \$114,000;  
Operating Season 5 (Sept. 11, 2023 - May 12, 2024): \$114,000;  
Operating Season 6 (Sept. 9, 2024 - May 11, 2025): \$114,000,  
Operating Season 7 (Sept. 15, 2025 – May 10, 2026): \$114,000.

**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 01/25/2019, 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 01/25/2019, 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 01/25/2019.

- ☒ NY Times a NYC local newspaper published in the affected borough(s) on 01/31/2019 and 02/01/2019.
- ☒ NY Post a NYC local newspaper published in the affected borough(s) on 01/31/2019 and 02/01/2019.
- ☒ Brooklyn Daily Eagle a NYC local newspaper published in the affected borough(s) on 01/31/2019 and 02/01/2019.

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

☒ A Public Hearing was conducted on 02/11/2019.

**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.

**CITY OF NEW YORK**  
**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**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 (“Agreement”) with the City University of New York on behalf of Kingsborough Community College (KCC) for the operation and maintenance of a parking lot at Manhattan Beach, identified as Block 8760, Lot 485, in the Borough of Brooklyn. The term of the Agreement is seven (7) operating seasons and shall be executed as follows: Operating Season 1: September 9, 2019 - May 12, 2020; Operating Season 2: September 14, 2020 – May 10, 2021; Operating Season 3: September 13, 2021 - May 9, 2022; Operating Season 4: September 12, 2022 - May 8, 2023; Operating Season 4: September 11, 2023 - May 12, 2024; Operating Season 6: September 9, 2024 - May 11, 2025, and Operating Season 7: September 15, 2025 - May 10, 2026. CUNY shall compensate Parks as follows: Season 1: \$114,000; Season 2: \$114,000, Season 3: \$114,000; Season 4: \$114,000; Season 5: \$114,000; Season 6: \$114,000, and Season 7: 114,000.

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

**February 13, 2019**

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

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

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



1. **DEFINITIONS** This document, including the Cover Page (as defined below), shall be referred to as the "Permit". The named person to whom this Permit is issued and who signs this Permit shall be referred to in this document as "Permittee" or "Concessionaire". The City of New York and its Department of Parks & Recreation shall be referred to as "City" and "Parks" respectively. The vending location designated by Parks where Permittee is authorized to operate under this Permit shall be referred to as the "Premises" or "Permitted Premises". The Premises are more fully described on the "Cover Page", which is attached hereto and made a part hereof and which is hereinafter referred to as the "Cover Page." The Premises may be changed by Parks during the Term. The "Term" is the period between the Effective Date and the Expiration Date, as shown on the Cover Page. Each of the "Operating Seasons" are defined in Section 8, below.

2. **TRANSFERS** This Permit is issued solely to the Permittee. Permittee shall not sell, assign, transfer, or sublicense this Permit or allow anyone else or any other entity to operate the concession under this Permit without Parks' prior written consent.

3. **IDENTIFICATION AND ADDRESS** Permittee shall provide to Parks proof of its identification and address by submitting acceptable documentation such as a government issued photo ID, current utility bills, bank statements or rental/lease agreements, or a certificate of incorporation. Documents listing a post office box or commercial receiving agency as the mailing address shall not meet the requirements of this Section 3. Permittee shall notify Parks immediately of any change in either Permittee's address or phone number as set forth on the Cover Page.

4. **ASSUMPTION OF RISK** In accepting this Permit, Permittee assumes all the risks involved in operating this concession. Permittee represents that Permittee has inspected the Premises and found it suitable for Permittee's purpose and in operating condition. Subject to Parks' prior written approval, any improvements and repairs deemed necessary shall be performed by Permittee at Permittee's sole cost and expense.

5. **SCOPE OF PERMIT** Parks authorizes Permittee to operate the concession granted by this Permit in accordance with the terms and conditions of this Permit. Permittee shall sell only the parking services set forth on the Cover Page. All such parking services shall be approved by Parks prior to operation of the concession under this Permit. This Permit does not convey any leasehold or proprietary right or interest.

During the term of Permit, the City reserves the right to construct solar canopies at the Premises as part of the City's effort to expand its solar energy capacity. Permittee will not be responsible for damage to the Premises during installation of solar canopies as a result of the installation (though Permittee shall remain responsible for any damage to the Premises caused in whole or in part by Permittee). Parks shall be responsible for maintenance of solar canopies installed at the Premises. Feasibility assessments, construction, reconstruction, or renovation may temporarily impede accessibility or usability of a number of parking spaces. Subject to the terms of Section 36, such activity shall have no effect on the Permittee's financial obligations under this Permit.

6. Permittee shall operate and maintain the Permitted Premises as a high-quality accommodation for the use and enjoyment of the general public.

(a) Permittee shall comply with all national safety guidelines and Federal, State, and City laws, rules and regulations related to the operation and maintenance of the Permitted Premises.

(b) Permittee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Contract Rider attached hereto as Exhibit A.

(c) Permittee shall have a sufficient number of staff available at the Premises during regular operating hours to ensure proper operation of the concession. Park reserves the right to require that all staff wear uniforms that have been approved in writing by Parks.

7. **PRICE LIST** Permittee shall conspicuously display a price list of all services that are sold and which has been reviewed and approved by Parks. Permittee shall not charge more for the parking services than the posted and approved amounts without Parks' prior written approval. All fees, prices, and any subsequent increases must be approved in advance in writing by Parks.

The parking fees for Kingsborough Community College students will be \$55 per semester or \$110 for the Operating Season.

A sufficient number of parking spaces will be available for the general public at a daily rate of ten dollars (\$10). During the Term of this Permit, the parking fees may be changed only with Parks' prior written approval.

8. **SEASONAL SCHEDULE OF DATES AND HOURS OF OPERATION** The authorization to operate the concession pursuant to this Permit

AGREED TO: \_\_\_\_\_  
Permittee's Signature

\_\_\_\_\_  
Date

agreement shall extend only during the Operating Season, as described below. Weather permitting, the concession must be opened, operated, staffed, and maintained from 7:00 a.m. to 10:00 p.m., daily, during each Operating Season. Changes in hours and dates of operation are subject to Parks' prior approval.

**Operating Season 1**

September 9, 2019 - May 12, 2020

**Operating Season 2**

September 14, 2020 – May 10, 2021

**Operating Season 3**

September 13, 2021 - May 9, 2022

**Operating Season 4**

September 12, 2022 - May 8, 2023

**Operating Season 5**

September 11, 2023 - May 12, 2024

**Operating Season 6**

September 9, 2024 - May 11, 2025

**Operating Season 7**

September 15, 2025 - May 10, 2026

9. **FREE ACCESS** Permittee shall not block any sidewalk, pathway, park entrance, or other pedestrian walkway with Permittee's equipment, supplies, or concession-related items. Permittee shall cooperate with Parks during special events and other unanticipated eventualities.

10. **DISABLED ACCESS** Permittee shall comply with all City, State, and Federal laws relating to access for persons with disabilities. This includes providing safe and accessible recreational opportunities for everyone. To the extent possible, Permittee is encouraged to exceed all applicable accessibility requirements for people with disabilities.

11. **TERMINATION** Parks may terminate this Permit at any time for any reason. Permittee will be given a written termination notice should Parks desire to terminate the Permit, such termination to be immediately effective upon certified delivery by mail or delivery by hand, or facsimile. Permittee expressly waives any and all claims against Parks and the City for losses and/or damages Permittee may suffer in the event of termination. Further, Parks will not reimburse Permittee's unamortized improvement,

alteration or repair costs as of the date of said termination.

12. **TERMINATION AND REMOVAL** Upon the expiration, or sooner termination, of this Permit, Permittee shall immediately cease all operations under this Permit and shall vacate the Premises without any further notice by Parks, and without resort to any judicial determination regarding termination of this Permit. Parks reserves the right to take immediate possession of the Premises.

Permittee shall, on or prior to the expiration or termination date, remove all Permittee's personal property from the Premises. Any personal property remaining on the Premises after the expiration, or sooner termination, of this Permit, shall be deemed abandoned by Permittee. Permittee shall remain liable to Parks for any damages, including lost revenue to Parks and the cost of removal or disposal of personal property left at the Premises by Parks should Permittee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date.

13. **SANITATION/MAINTENANCE** Permittee shall keep the Premises and the area within fifty (50) feet of the Permitted Premises clean and free of all waste, garbage, refuse, rubbish, and litter at all times, which Permittee shall remove from the Premises at Permittee's sole cost. Permittee shall provide adequate waste and recycling receptacles that are approved by Parks and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval. Permittee shall comply with all City, state, and federal regulations regarding recycling. Rubbish removal schedules are subject to Parks' prior written approval.

Permittee shall remove ice and snow from the Premises and associated walkways promptly, but in no event later than eight (8) hours after each snowfall or accumulation of ice. Permittee shall keep the concession and all signs and structures clean and free of graffiti.

Permittee shall, at its sole cost and expense, maintain and operate the entire concession in good and safe condition and in accordance with industry standards. Such maintenance and repair activities shall include but not be limited to all interior and exterior structures, building systems, utility systems and

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connections, drainage, sewer systems and connections, equipment, lighting, fencing, gates, sidewalks, vaults, gutters, curbs, and fixtures. In addition, all signs and structures on the Permitted Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Permitted Premises shall be subject to Parks' prior approval. To ensure Parks' satisfaction with compliance with this paragraph, Permittee shall provide Parks with full and free access to the Premises.

14. **EQUIPMENT/OIL TANKS** Permittee shall maintain all fixtures and equipment in clean, good and safe operating condition without any broken parts or obvious damage and in accordance with industry standards.

Permittee shall register any and all underground oil storage tanks over a 1,100 gallon capacity with the Department of Environmental Protection (DEP) and shall conduct or cause to be conducted a tightness test at least once every five (5) years.

15. **TOBACCO; ALCOHOL** The sale and/or advertisement of alcohol, cigarettes (including electronic cigarettes), cigars, or any other tobacco products, as well as non-tobacco smoking products, is strictly prohibited. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this Section.

16. **TREES** Permittee is prohibited from cutting down, pruning, or removing any trees or shrubbery on the Premises without prior written approval from Parks Forestry Department and any other entity with jurisdiction over the park within which the Premises is located. Permittee shall report dead and diseased trees to Parks. Any attachments to trees, such as, but not limited to, lights, are strictly prohibited.

17. **SECURITY** Pursuant to a plan approved in writing by Parks, the concessionaire, at its sole cost and expense, shall be responsible for all security at the Permitted Premises year round and shall provide a security system at the Permitted Premises in accordance with plans approved by Parks in writing in advance. Permittee shall secure the Premises and any equipment and inventory every evening and any time the concession is closed.

18. **RESERVED**

19. **SECURITY DEPOSIT** NOT APPLICABLE

20. **DROUGHT ISSUES** Permittee shall adhere to all Department of Environmental Protection (DEP) directives and restrictions.

21. **REIMBURSEMENT TO PARKS** If Permittee fails to perform any of the terms of this Permit, then Parks may, at its option, and without prejudice to any other remedy which the City may have, fulfill any Permittee obligation without any liability to Permittee. Permittee shall reimburse Parks upon demand for costs incurred as a result of any loss, damage or expense sustained by the City resulting from such default on the part of Permittee.

23. **LATE PAYMENTS** A late charge may be assessed for any fee payment not received by Parks on or prior to the payment dates specified on the Cover Page. A late charge of 2% per month may be applied to any unpaid balance that is overdue for ten (10) days following the date for which such fees are due. For example, a monthly payment, in the amount of \$1,000.00, due on the 1<sup>st</sup> day of the month must be received no later than the 10<sup>th</sup> day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11<sup>th</sup> day of the month.

24. **UTILITY COSTS** Permittee shall at its sole cost and expense directly obtain and pay for all utility services related to the operation of this Permit, if any, including but not limited to the installation of all necessary utilities, service lines, conduits, water meters and pipes. This includes establishing a dedicated meter and/or sub-meter that captures electricity usage at the permitted premises and an account with Con Edison (or other relevant providers) as appropriate. Such utility costs include all Department of Environmental Protection ("DEP") water and sewer charges. Permittee shall remove any unsuitable existing materials, as required. Parks does not make representation or warranty that existing utility services are adequate for Permittee's needs or that any entity can or will make such service available. Licensed electricians must make all installations.

25. **IMPROVEMENTS, ALTERATIONS AND REPAIRS** Permittee may alter Permitted Premises only in accordance with the requirements of this section of this section.

(a) "Improvements" shall mean all construction, reconstruction or renovation of the Permitted Premises, including architectural, engineering, and design fees and permitting costs necessary to implement such construction, reconstruction or renovation of the

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Permitted Premises. Improvements also include the installation of all "Fixed Equipment," meaning any property affixed in any way to Permitted Premises, whether or not removal of said equipment would damage Permitted Premises, which the Permittee installs or causes to be installed on the Permitted Premises.

(b) "Alterations" shall mean (excepting ordinary repair and maintenance) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Permitted Premises; or any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Permitted Premises.

(c) The design, placement, and colors for all equipment and facilities are subject to the prior written consent of Parks.

(d) In addition, Permittee shall be required to make any other alterations, repairs or improvements necessary for the efficient and/or safe operations of the Permitted Premises, as determined by Parks in consultation with Permittee. All alterations, improvements and repairs performed under this Permit shall be subject to the prior review and approval of Parks, as well as any other governmental agency with jurisdiction to the extent required by law. Parks must approve in writing, any modifications or changes to the alterations, improvements and repairs performed under this Permit.

(e) Permittee shall perform and complete all improvements, alterations and repairs at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. The Permittee shall make no improvements, alterations or repairs without the Commissioner's prior written consent.

(f) Parks will use its reasonable efforts to approve or disapprove Permittee's design plans within thirty (30) days of receipt thereof.

(g) Permittee shall use its best efforts to minimize the extent to which the public use of the park property of the City is disrupted in connection with the alterations, improvements or repairs at the Premises.

(h) Permittee shall utilize energy efficient LED lighting.

(i) **Reserved.**

(j) Permittee shall pay all applicable fees and shall submit to Parks and all other governmental

agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. No improvements, alterations or repairs shall be deemed completed until the Commissioner certifies in writing that the improvement, alteration or repair has been completed to Commissioner's satisfaction.

(k) At Parks' request, Permittee shall provide Parks with one complete set of final, approved plans on 4 millimeter double matte Mylar. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All final, approved drawings submitted must be so labeled. Each drawing shall contain the name, address & telephone number of the Architect/Engineer and the Contractor. Each drawing shall also include the Parks property number, Block and Lot numbers for the Parks facility in which the work was performed, and, if applicable, the New York City Department of Buildings' approval/application number (s).

(l) For any improvements, alterations or repairs commenced under this Permit, Permittee shall apply for applicable licenses from the construction permit office located in the Olmsted Center, Flushing Meadows Corona Park prior to commencement of work. Permittee shall commence such improvements, alterations or repairs only after the issuance of a construction license from Parks and a building permit issued by the Department of Buildings. Permittee shall notify Commissioner of the specific date on which construction shall begin.

(m) No temporary storage or other ancillary structures and staging areas may be erected and maintained without a license obtained from Parks' Construction Division, License Office.

(n) During performance of the improvements, alterations and repairs and up to the date of their completion, Permittee shall be responsible for the

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protection of the finished and unfinished improvements, alterations or repairs against any damage, loss or injury. In the event of such damage, loss or injury, Permittee shall promptly replace or repair such improvements, alterations or repairs at its sole cost and expense.

(o) Permittee shall perform all improvements, alterations and repairs in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the improvements, alterations and repairs shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Permittee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable.

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

(q) Unless otherwise provided, Permittee shall choose the means and methods of completing the improvements, alterations or repairs unless Commissioner reasonably determines that such means and methods constitute or create a hazard to persons or property or will not produce finished improvements, alterations or repairs in accordance Section 24.1.

(r) Permittee shall provide written notice to Commissioner when the improvements, alterations or repairs are Substantially Completed. After receiving such notice, Commissioner shall inspect such improvements, alterations or repairs. After such inspection Commissioner and Permittee shall jointly develop a list of incomplete and outstanding work items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Permittee shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by the Commissioner.

(s) Permittee shall provide Parks with discharges

for any and all liens that may be levied against the improvements, alterations or repairs during construction of same. Permittee shall use its best efforts to discharge such liens within thirty business days of receipt of lien by Permittee.

(t) Permittee shall promptly repair, replace, restore, or rebuild as the Commissioner reasonably may determine, items of improvements or alterations in which defects of materials, workmanship or design may appear or to which damages may occur because of such defects, during the one-year period subsequent to the date of their completion of such alterations, improvements or repairs.

(u) Neither Parks, nor the City, its agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Permit by the City, the Commissioner, or any other officer, agent or employee of the City, before the completion and acceptance of the improvements, alterations or repairs, from showing that such improvements, alterations or repairs or any part thereof do not in fact conform to the requirements of this Permit and from demanding and recovering from the Permittee such damages as Parks or the City may sustain by reason of Permittee's failure to perform each and every part of this Permit in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 24.17 signed by the Commissioner or Commissioner's authorized representative.

(v) Upon installation, title to all construction, renovation, improvements, alterations, repairs and fixtures made to the Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Premises, it shall be the responsibility of Permittee to remove such items and restore the Premises to the satisfaction of the Commissioner at the sole cost and expense of the Permittee. However, Permittee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

26. **INSURANCE** NOT APPLICABLE

27. **INDEMNIFICATION AND HOLD HARMLESS**

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28. **STORAGE** Parks makes no representation that there is adequate storage space at the Premises. Permittee is responsible, at its sole cost and expense, for obtaining any additional storage space required for the operation of its concession. Unless specifically authorized by Parks in writing to use a Parks' building or facility, Permittee shall not store any equipment or supplies on Parks' property. Permittee will be required to store all equipment on a nightly basis and anytime the concession is closed.

Licensee shall not use or permit the storage of illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances, or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York. Additionally, Licensee shall not store firewood, scrap wood, salt, ice melter, fertilizer or any corrosives or high sodium products, including herbicides (e.g., Roundup™) at the Premises unless such materials shall be in proper storage, as reasonably approved by Parks. Nothing used or stored at the Premises shall conflict with the terms and conditions of Licensee insurance policies.

29. **FIXED EQUIPMENT** The Commissioner represents and the Permittee agrees and acknowledges that City holds title to all equipment and fixtures located at the Premises.

30. **INTERNAL CONTROLS** Throughout the Permitted term, the concessionaire will be required to maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. The concessionaire must also establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record.

31. **RECORDS OF SALES** Permittee shall maintain records of the following information in a form suitable for audit by Parks and/or the City Comptroller's Office:

(a) Sales activities for parking privileges at the Premises must be recorded separately from any other businesses that may be operated by the Permittee.

(b)

Sales information must be recorded electronically and be maintained in a formal electronic record of account.

(c) Cash receipts from operations under this Permit must be deposited regularly in the aforementioned dedicated bank account located in New York City dedicated to deposits of concession-related revenue and reconciled with the sales reports.

(d) Reserved.

(e) Related records of the operations authorized hereunder, including records relating to accounting and controls, shall be retained for a period of at least ten (10) years from the date of creation of the record.

32. **STATEMENT OF GROSS RECEIPTS-INCOME** Within sixty (60) days of the end of each Operating Year Permittee shall submit a certified annual statement of gross receipts generated from all operations under this Permit for the previous Operating Year, properly segregated so as to permit audit by Parks or the City. Each statement must indicate whether the receipts being reported are inclusive of sales taxes collected or net of taxes, indicate the Permit number, location, and period of time covered. This statement must be submitted on a form provided or approved by Parks. Gross receipts include the following:

- **Merchandise Sales-** Receipts from charges for merchandise sold at the Premises.
- **Miscellaneous-** Receipts from charges for any revenue-generating activities at the Premises.

Within sixty (60) days following the end of each Operating Season, Permittee must also have available, at the request of Parks, monthly statements of gross receipts as well as a detailed income and expense statement for the past Operating Season.

Permittee shall pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state, or city sales taxes paid by the Permittee.

33. **TAXES** Permittee is responsible for obeying all relevant laws, rules and regulations and obtaining all necessary permits and licenses. Permittee shall obtain and provide to Parks a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other applicable taxes.

34. **AUDIT** Permittee shall make available to the office of The Comptroller of the City of New York, and/or Parks' auditor, on demand, all books, records,

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documents, and correspondence pertaining to this Permit, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of The Comptroller of the City of New York and/or the Commissioner.

35. **NOTICE TO CURE** Permittee shall comply with all directions and instructions Parks issued to Permittee. Failure to comply with any such directive or with any of the provisions of this Permit within ten (10) days, or any shorter period set forth in such directive or notice, may result in the suspension and/or termination of this Permit. Parks may impose a \$250.00 administrative fee for reinstatement of a suspended Permit.

36. **SUSPENSION** This Permit may be suspended for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice of suspension, Permittee shall not operate. In the event that Permittee's business is disrupted due to construction in the park where the Premises is located, this Permit may be suspended, at Parks' option. If the suspension is related to Parks' construction and equal to or greater in length than the duration of one Operating Season, Parks in its sole discretion may extend the Term of this Permit by an additional Operating Season.

37. **OTHER PERMITS** A New York City Department of Parks and Recreation Vendor's permit is not a substitute for a Consumer Affairs or other applicable license. For many locations, and for many types of concessions, more than one license or permit may be required. Without ALL necessary licenses or permits, Permittee may be fined, Permittee's items or equipment necessary for the operation of the concession may be confiscated and Permittee may be prevented from operating the concession at the Premises. Permittee shall check for license/permit requirements with the following department:

**NYC Department of Consumer Affairs  
Licensing Center  
42 Broadway, 5<sup>th</sup> Floor  
New York, NY 10004  
(212) NEW-YORK**

38. **PERMIT/SIGNAGE DISPLAY** The hours of operation and fees for parking must be posted conspicuously at every exit and entrance to the Premises. Permittee shall provide all signage necessary for the operation of the Premises, including directional signs. The size, color, designs, and placement of such

signs is subject to Parks' prior written approval. Permittee will be prohibited from displaying, placing, or permitting the display or placement of advertisements in or on the Premises, without the prior written approval of Parks. The display or placement of tobacco, electronic cigarette, or non-tobacco smoking product or alcoholic beverage advertising shall be prohibited. The following standards will apply to all allowed advertising: any 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 also be prohibited. The advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Any prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks at Permittee's sole cost and expense.

39. **SPECIAL EVENTS** It is expressly understood that this Permit shall in no way limit Parks' right to sponsor or promote Special Events or to enter into agreements with third parties to sponsor or promote such events.. Parks reserves the right to relocate the Permittee from the Premises or suspend operations under the Permit in the event that such Special Event occurs within the Premises. Parks will use reasonable efforts to ensure that such third parties will be responsible for maintenance and clean -up of the Premises associated with any such Special Event. Permittee shall cooperate with Parks during special and unanticipated events, including emergencies.

40. **NO DISCRIMINATION** Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, or any other protected class of individuals as defined by City, state or federal laws, rules or regulations. As used herein, the term "employment" shall mean and include, without limitation, the following: recruited, whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, downgraded, transferred, laid off, and terminated. Any violation of this paragraph shall be deemed a material breach of this Permit for which it may be terminated or suspended.

41. **INSPECTIONS AND LIQUIDATED DAMAGES**

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(a) Permittee agrees that any failure to perform requirements to such standard as set forth in this Permit shall result in injuries to the City and its residents, businesses and institutions the compensation for which will be difficult to ascertain. Accordingly Permittee agrees that notwithstanding any other remedy at law to ensure Permittee's compliance with the provisions of this Permit, the liquidated damages in the amounts set forth herein below are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture.

(b) Parks' inspectors will visit the Premises unannounced to inspect operations, ensure proper maintenance of the Premises and determine whether Permittee is in compliance with the terms and conditions of this Permit. Based on these inspections, Parks may issue directives to Permittee regarding any violations found at the Premises. Permittee shall comply with all Parks directives within the time period specified therein. If Permittee fails to provide the cleaning, maintenance, and operational services required by this Permit, Parks will notify Permittee in writing, and Permittee shall correct such shortcomings within the timeframe set forth in such notice. If Permittee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate this Permit. Parks may impose a \$250 administrative fee for reinstatement of a suspended Permit. Liquidated damages may be assessed in accordance with the following schedule:

<u>Provision</u> <u>Damage</u>	<u>Liquidated</u> <u>Per Occurrence</u>
Unauthorized Merchandise	\$150
Missing or unauthorized price list	\$250
Overcharging	\$350
Expanding	\$350
Blocked exits or pathways	\$350
Improper disposal (Noxious liquids, debris, etc.)	\$350
Structures damaged or in poor repair	\$350
Graffiti, Dirty structures or fixtures	\$350
Unauthorized Advertising	\$100

Improper storage	\$350
Sticker Expired or Not Displayed	\$250
Operating without valid Permit or License	\$350
311 sign not displayed	\$250
Attaching Materials to Permitted Premises without Parks' authorization	\$350
Unauthorized tapping into utilities used, operated, or owned by the City	\$350
Unauthorized vehicular activity	\$350
Failure to provide designated parking spaces for persons with disabilities	\$250

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply with the requirements set forth herein. If Permittee fails to pay liquidated damages to Parks within ten (10) days of receipt of notice, this Permit may be suspended or terminated.

(c) If Permittee receives an assessment for one of the above violations, there is a process by which such assessment may be appealed if Permittee believes that the assessment has been assessed in error. Permittee may file an appeal as follows:

A. (i) **Filing an Appeal** If the concessionaire 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 Permittee believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Permittee's appeal (such as photographs, documents, witness statements) should also be included.

(ii) If no appeal is received within ten (10) days of the date the assessment is mailed, the assessment shall be considered final and charged to the concessionaire's account.

(d) **Adjudication of an appeal:**

A. (i) The appeal shall be sent to the Director of Operations Management & Planning ("OMP"), whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of OMP to decide on the merits of

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these appeals. The decision of the Director of OMP shall constitute the final decision of Parks.

- B. (ii)** The Director of OMP is authorized to investigate the merits of the appeal, but is not required either to hold a hearing or to speak to Permittee in person.

#### 42. INSPECTIONS AND INVESTIGATIONS

**(a)** Permittee shall allow the Commissioner, the Commissioner's representatives and any other City, State, or Federal official having jurisdiction and all government employees with photo identification to inspect the Premises which Permittee operates at any time.

**(b)** The parties to this Permit 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.

**(c) (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 cooperation within the City, then:

**(d) (i)** 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 (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 incurring any penalty or damages for delay or otherwise.

**(e)** 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 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 Permit, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair 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.

**(f)** 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 that 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

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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 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 (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 potentially adverse impact a penalty will have on such person or entity.

(g) (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 "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.

(h) (i) In addition to and notwithstanding any other provision of this Permit the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event Permittee 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 of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Permittee, or affecting the performance of this Permit.

43. **CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE** This Permit shall be deemed to be a contract ("Contract") executed in the City of New York, State of New York, regardless of Permittee's domicile, and shall be governed by and construed in accordance with the laws of the State of New York.

Permittee agrees that any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York ("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 agreement and intent, Permittee agrees to the following:

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

(b) With respect to any action between the City and the Permittee in New York State Court, the Permittee 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.

(c) With respect to any action between the City and the Permittee in Federal Court located in New York City, the Permittee 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.

(d) If the Permittee 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 Permittee 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 Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York

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City.

If any provision of this Section is held unenforceable for any reason, each and every other provision shall nevertheless remain in full force and effect.

**44. WAIVER OF TRIAL BY JURY**

Permittee hereby waives trial by jury in any action, proceeding, or counterclaim related to this Permit.

**45. PROCUREMENT OF AGREEMENT**

Permittee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Permittee 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. Permittee makes such representations and warranties to induce the City to enter into this Permit and the City relies upon such representations and warranties in the execution hereof.

For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and the Permittee shall not make any claim for, or be entitled to recover, any sum or sums due under this Permit. 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 for by law or pursuant to this Permit.

**46. CUMULATIVE REMEDIES - NO**

**WAIVER** The specific remedies to which the City may resort under the terms of this Permit 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 Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

**47. SEVERABILITY; INVALIDITY OF PARTICULAR PROVISIONS**

If any term or provision of this Permit or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and enforceable to the fullest extent permitted by law.

**48. CONFLICT OF INTEREST**

Permittee 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. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Parks, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Permit 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 Permit or in the proceeds thereof.

**49. JUDICIAL INTERPRETATION**

Should any provision of this Permit 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

**50. ALL LEGAL PROVISIONS DEEMED INCLUDED**

Each and every provision of law required to be inserted in this Permit shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Permit shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**51. PRIOR UNDERSTANDING; NO ORAL MODIFICATION**

This Permit states the entire and integrated agreement between the City and Permittee and supersedes all prior negotiations, representations and agreements, whether written or oral. This Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and Permittee.

AGREED TO: \_\_\_\_\_  
Permittee's Signature

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**52. MARKETING AND SPONSORSHIP AGREEMENTS**

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

**53. PAYMENT AND NOTICE** Any Permit fees, charges or sums payable by Permittee to Parks shall be made to the New York City Department of Parks & Recreation, Revenue Division, The Arsenal - Room 407, 830 Fifth Avenue, New York, NY 10065.

Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery, facsimile, or by mailing a copy of such notice by first class mail addressed to Commissioner at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 or to the attention of Permittee at its address provided in this Permit, or to any other address that Permittee shall have filed with Commissioner.

AGREED TO: \_\_\_\_\_  
Permittee's Signature Date

**EXHIBIT A****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> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](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 Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

**Applicability, Accrual, and Use**

An employee who works within the City of New York for more than eighty hours in any

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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.

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consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLC (“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 PSLC 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 PSLC. 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 PSLC 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

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of non-compliance with such a policy.

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

### **Exemptions and Exceptions**

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

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

### **Retaliation Prohibited**

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

### **Notice of Rights**

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

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

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**Records**

An employer must retain records documenting its compliance with the PSLL 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 PSLL.

**Enforcement and Penalties**

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

AGREED TO: \_\_\_\_\_  
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Date