


## **PUBLIC NOTICE**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Transportation (“DOT”) to be held on June 10, 2019, at 2 Lafayette Street, 14<sup>th</sup> Floor Auditorium, Borough of Manhattan, commencing at 2:30 pm relative to:

INTENT TO AWARD as a concession a Sole Source License Agreement (“License”) to the Meatpacking District Management Association, Inc. (“Meatpacking BID”), whose address is 32 Gansevoort Street, 5th Floor, New York, NY 10014, to provide for the operation, management, and maintenance of pedestrian plazas located at 9th Avenue between Gansevoort Street and West 15<sup>th</sup> Street, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Meatpacking BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Meatpacking BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. Meatpacking BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

The License will provide for one (1) six-month term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT.

A draft copy of the License may be reviewed or obtained at no cost, commencing May 31, 2019 through June 7, 2019, between the hours of 10am and 4pm, excluding weekends and holidays at the NYC Department of Transportation, located at the NYC Department of Transportation, Office of Cityscape & Franchises, 55 Water Street, 9th Floor, NY, NY 10041.

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

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

# CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

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

<b>AGENCY:</b> NYC Department of Transportation (DOT)	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>Meatpacking District Management Association, Inc.</u> ("Meatpacking BID")	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Concession to operate, manage and maintain pedestrian plazas located at 9th Avenue between Gansevoort Street and West 15th Street in the Borough of Manhattan</u>
<b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> N/A	<b>Address:</b> <u>32 Gansevoort Street, 5th Floor, New York, NY 10014</u> <b>Telephone #</b> <u>212-633-0185</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>81-0788036</u>  <b>Not-for-Profit Organization Certified by DSBS as M/WBE</b> <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<b>CONCESSION I.D.#</b> <u>2018Con8</u>

**LOCATION OF CONCESSION SITE(S\*) Address:** The pedestrian plazas are located at 9th Avenue between Gansevoort Street and West 15th Street, in the borough of Manhattan ("Licensed Plaza") ☐ N/A

\*Attach additional sheet

**Borough:** Manhattan **C.B.:** 2, 4 **Block #** N/A **Lot #** N/A

## SELECTION PROCEDURE

(\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids  
☐ Competitive Sealed Proposals\* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_.)  
☒ Different Selection Procedure: \* (☒ Sole Source Agreement ☐ Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on 11/14/2018.  
☐ Negotiated Acquisition\*

## CONCESSION AGREEMENT TERM

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

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

**Total Potential Term:** 15 Years, 6 months

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

## ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ Annual Fee(s) \$ \_\_\_\_\_

☐ % Gross Receipts \_\_\_\_\_%

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

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

## NOTIFICATION REQUIREMENTS

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

☐ YES ☒ NO

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

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

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

- ☒ The Agency certifies that each affected CB/BP received written notice by 10/05/2018, which was at least 40 days in advance of the FCRC meeting on 11/14/2018 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 6/12/2019.

☐ 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 \_\_\_\_\_ Title \_\_\_\_\_**

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

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

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

**City Chief Procurement Officer**

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

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

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

***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 License would permit Meatpacking BID to operate, manage and maintain the pedestrian plazas located at 9th Avenue between Gansevoort Street and West 15th Street, in the borough of Manhattan (the "Licensed Plaza"), including through DOT-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Meatpacking BID, and other similar merchandise within the Licensed Plaza. The License will provide for one (1) six-month term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. Meatpacking BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

**C. BASIS FOR AWARD** (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

**The agency determined that award of the concession is in the best interest of the City because:**

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

**D. PUBLIC HEARING**

☐ N/A – Subject award NOT a significant concession]

## 1. Publication & Distribution of Public Hearing Notice

- ☐ Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on \_\_/\_\_/\_\_, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by \_\_/\_\_/\_\_.

☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_  
☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

**OR**

- ☒ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 5/24/2019, 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 5/24/2019 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 4/15/2019.

☒ Our Town Downtown/Chelsea News, a NYC local newspaper published in the affected borough(s) on 5/9/2019 and 5/16/2019.

☒ Amsterdam News, a NYC local newspaper published in the affected borough(s) on 5/9/2019 and 5/16/2019.

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

- ☒ A Public Hearing was conducted on 6/10/2019.

**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**

(Calendar No. \_\_)

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a Sole Source License Agreement (“License”) with the Meatpacking District Management Association, Inc. (“Meatpacking BID” ) to provide for the operation, management, and maintenance of pedestrian plazas located at 9th Avenue between Gansevoort Street and West 15<sup>th</sup> Street, in the borough of Manhattan (“Licensed Plaza”), including through DOT-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Meatpacking BID, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by Meatpacking BID in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License will provide for one (1) six-month term, commencing upon written Notice to Proceed, which may be renewed for up to three (3) additional five-year terms, exercisable at the sole discretion of DOT. Meatpacking BID will be required to invest any revenue generated by this concession into the maintenance and/or repair, including reasonable administrative costs, of the Licensed Plaza.

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

June 12, 2019

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

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

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

**THIS LICENSE (this “License”)**, made as of the \_\_\_\_ day of \_\_\_\_\_, 2019 between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and Meatpacking District Management Association, Inc. (“Meatpacking BID”), a New York not-for-profit corporation.

**WITNESSETH**

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

**WHEREAS**, Meatpacking BID was formed in 2015 to improve and enhance the Meatpacking District in the borough of Manhattan, City and State of New York, including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, DOT has jurisdiction over pedestrian plazas located at 9<sup>th</sup> Avenue between Gansevoort Street and West 15<sup>th</sup> Street, New York, New York (“Licensed Plaza”). The Licensed Plaza shall consist of three separate areas as illustrated in **Exhibit A**; and

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

**WHEREAS**, the City, at its sole cost and expense, designed and constructed the Licensed Plaza, including the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

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

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

**WHEREAS**, Meatpacking BID has experience performing maintenance activities in the Meatpacking District; and

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

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

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

**WHEREAS**, the Franchise and Concession Review Committee (“FCRC”) authorized DOT to enter into a Sole Source License Agreement with Meatpacking BID, to provide for the operation, management and maintenance of the Licensed Plaza, including through City-approved events, sponsorships and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Meatpacking BID, and other similar merchandise (“Subconcession(s)”) within the Licensed Plaza.

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

**1. SCOPE OF LICENSE**

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

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

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

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

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



shall be valid or binding upon the City, DOT, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his/her duly authorized representative.

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

## **2. TERM**

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

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

## **3. SERVICES**

A. Meatpacking BID shall provide or cause to be provided the Services described herein related to certain amenities, which may include but are not limited to benches, tables, chairs, umbrellas, planters and security blocks within the Licensed Plaza, as more particularly described in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. Any amenities purchased by Meatpacking BID subsequent to the Commencement Date, which are not of a permanent nature or affixed to the Licensed Plaza may be removed by Meatpacking BID, at its sole cost and expense, prior to the expiration of the Term or termination of this License. Any such amenities which are not removed by Meatpacking BID shall be deemed abandoned.

B. Meatpacking BID shall provide or cause to be provided the maintenance of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this Section to the reasonable satisfaction of DOT. All such maintenance shall be performed in a good and workmanlike manner.

### **(1) Cleaning/Trash Removal:**

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

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

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

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

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

f) Any umbrellas, tables, and chairs ("Moveable Street Furniture") shall be cleaned and maintained as reasonably necessary.

(g) Security blocks shall be cleaned and maintained as reasonably necessary.

(h) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be maintained as reasonably necessary.

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

(2) Snow Removal:

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

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

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

(3) Landscape Maintenance:

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

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

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

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

e) Seasonal or annual pruning.

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

(4) Other Maintenance:

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

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

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

d) Moveable Street Furniture: Maintain in good condition.

e) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in Exhibit B as “DOT Standard” shall be repaired as needed within a reasonable time.

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

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

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

F. Advertising (other than in a form identifying Meatpacking BID with approval from DOT) is strictly prohibited. Meatpacking BID may accept sponsorships and display sponsor recognition in the Licensed Plaza subject to Section 9 of this License. Such sponsor recognition shall be permitted subject to DOT approval, provided, however, such approval or denial shall not be unreasonably delayed.

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

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

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

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

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

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

J. Effective upon the Commencement Date, Meatpacking BID shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report to DOT and cause to be repaired any portion or feature of the Licensed Plaza

for which Meatpacking BID has repair responsibility under this License that exhibits defects or hazardous conditions, and shall immediately institute appropriate measures to protect the public from harm, including, but not limited to, the posting of warning signs and temporary barriers. With respect to any portion or feature of the Licensed Plaza for which Meatpacking BID does not have repair responsibility under this License, Meatpacking BID shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

K. Notwithstanding anything to the contrary contained in this License, Meatpacking BID shall not be responsible for the repair or replacement of the cobblestones within the Licensed Plaza.

#### **4. BUDGET**

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

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

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

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

#### **5. REVENUE**

A. Meatpacking BID shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to Meatpacking BID under this License, including:

- (1) any funds collected for Services under Section 3;
- (2) any funds collected under a Subconcession described in Sections 6 and 7;

- (3) any funds collected for Plaza Events under Section 8; and
  - (4) any funds collected for sponsorships under Section 9
- (collectively referred to herein as "Revenue").

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter Meatpacking BID may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, Meatpacking BID may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other Meatpacking BID funds not directly generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) Meatpacking BID shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. Meatpacking BID may withdraw and use Revenue from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to Meatpacking BID's operation of the Licensed Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, maintaining and repairing the Licensed Plaza and as described in Sections 1 and 3.

C. No withdrawals shall be made from the Special Account other than as provided in this License.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by Meatpacking BID (such as grants, donations, bequests and contributions) other than in the course of Meatpacking BID's use or operation of the Licensed Plaza. Applicable law governs Meatpacking BID's use of such other revenues.

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

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

## **6. SUBCONCESSION(S)**

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

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

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

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

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

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

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

## **7. OPERATION OF THE SUBCONCESSION(S)**

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

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

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

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

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

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



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

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

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

(3) Meatpacking BID shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place (4) Revenue that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

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

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

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

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

subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. (1) Meatpacking BID, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s)' sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. Meatpacking BID shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession

structure by the City to MEATPACKING BID. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, Meatpacking BID shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of Meatpacking BID or its subconcessionaire(s).

(3) Meatpacking BID shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

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

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

(6) During the term of this License, Meatpacking BID shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, Meatpacking BID shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of Meatpacking BID or its subconcessionaire(s).

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

(8) 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.

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

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

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

(12) Meatpacking BID shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subcontract structure.

(13) Meatpacking BID shall keep DOT fully informed of Meatpacking BID's progress in the construction of the Subconcession(s) and/or any subcontract structure.

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

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

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

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

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

## **8. SPECIAL EVENTS AND REVENUE**

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

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

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

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

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

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

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

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

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

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

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

F. Meatpacking BID shall pay for, or cause to be paid any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI) or such entities as may be required for any music or music programming during its events and DOT shall pay for any such fees or royalties relating to DOT's events.

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

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

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

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

(2) All sponsorships benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by Meatpacking BID. Additionally, Meatpacking BID must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. Meatpacking BID shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

**B. Gifts**

(1) DOT may, in its discretion, permit Meatpacking BID to accept gifts solely for the benefit of the City and the Licensed Plaza. For purposes of this agreement, such gifts shall not be considered Revenue. Gifts obtained for the general benefit of the Meatpacking BID shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be subject to the provisions of this subsection.

(2) All gifts benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by Meatpacking BID. Additionally, Meatpacking BID must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. Meatpacking BID shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.

(3) Meatpacking BID shall prepare and provide to DOT bi-annual reports detailing any such gifts benefiting the City and the Licensed Plaza, in a format reasonably acceptable to DOT.

**C.** The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

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

## **10. INSPECTION AND AUDIT OF RECORDS**

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

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



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

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

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

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

generated from the Subconcession(s) and detailed statements, to DOT's reasonable satisfaction, concerning the expenses that Meatpacking BID has incurred in connection with its maintenance responsibilities under this License.

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

- (1) all federal, state and local tax returns and schedules of Meatpacking BID;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and
- (4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

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

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

I. The failure or refusal of Meatpacking BID to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of Meatpacking BID to maintain adequate internal controls or to keep any of the records as required by this Section after written prior notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to Meatpacking BID in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License in accordance with Section 19 hereof.

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

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

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

## **11. INSURANCE**

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

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

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

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

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

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

(1) Commercial General Liability Insurance: of not less than three million dollars (\$3,000,000) combined single limit per occurrence, one million dollars (\$1,000,000) personal and advertising injury, five million dollars (\$5,000,000) aggregate, and two million dollars (\$2,000,000) products completed operations. All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. Meatpacking BID shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

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

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

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

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

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

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

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

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

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

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

H. If any moveable fixtures and/or any improvements made by Meatpacking BID or its subconcessionaire(s) shall be damaged by fire, or other cause, such damage shall be promptly

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

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

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

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

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

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

N. Failure to comply with the terms of this Section 11 shall be deemed a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

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

## **12. INDEMNIFICATION**

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

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

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

(3) Meatpacking BID's and/or its subconcessionaire(s)' duty to defend, indemnify and hold the City, its agents, officials and employees harmless, as provided in this Section, shall not be abrogated, diminished or otherwise affected by Meatpacking BID's and/or its subconcessionaire(s)' further duty, respectively, in their behalf to procure and maintain insurance pursuant to the provisions of Section 11 hereof, nor by their failure to avail themselves

of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License.

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

B. City agrees to defend, indemnify and hold Meatpacking BID, its agents, officers, directors, employees, representatives, and volunteers harmless from and against any and all liabilities, obligations, damages, and expenses arising from the design and construction of the Licensed Plaza, the existing roadway and cobblestones, and any subsurface structural conditions.

### **13. ASSIGNMENT**

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

B. Meatpacking BID shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed, and any such request, approval or disapproval may, for these purposes, be given by the parties through e-mail notification. Two (2) copies of each such proposed subcontract shall be submitted to DOT with Meatpacking BID's written request for approval. The Meatpacking BID shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

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

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

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

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



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

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

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

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

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

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

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

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

A. Meatpacking BID may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Licensed Plaza by installing other amenities in addition to those already installed and listed in Exhibit B upon DOT's prior written approval. Meatpacking BID shall not apply any Revenue to any such capital improvements, however, Meatpacking BID may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the Meatpacking BID plans to capitally improve the Licensed Plaza, Meatpacking BID shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. Meatpacking BID may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. Meatpacking BID shall not apply any Revenue to any such alterations, however, Meatpacking BID may apply gifts as contemplated in Section 9(B) to any such alterations.

C. Meatpacking BID shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. “Alteration” shall have the following meaning:

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

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

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

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

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

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City’s option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to Meatpacking BID. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of Meatpacking BID to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of Meatpacking BID.

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

## **15. INSPECTION AT SITE**

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

## **16. PERSONNEL**

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

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

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

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

## **17. INVESTIGATIONS CLAUSE**

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

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

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

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

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

D. The penalties which may attach after a final determination by the Commissioner

or agency head may include but shall not exceed:

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

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

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

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

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

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

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

#### F. Definition of Terms

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

(2) The term "person" as used herein shall be defined as any natural person

doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

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

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

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

## **18. NOTICE**

All notices from Meatpacking BID to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to Meatpacking BID shall be dispatched in the same manner, and delivered to Meatpacking BID at 32 Gansevoort Street, 5<sup>th</sup> Floor, New York, NY 10014 Attn: Executive Director, or such other address as may be notified from time to time.

## **19. TERMINATION**

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

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

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

(2) If DOT determines that Meatpacking BID or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including but not limited to MEATPACKING BID's or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

A. Meatpacking BID shall faithfully perform and carry out the provisions of this License and cause its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. Meatpacking BID shall comply with and shall cause its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and Meatpacking BID's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

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

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

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



## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

### **A. Meatpacking BID makes the following representations and warranties:**

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

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

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

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

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

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

**C.** City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by Meatpacking BID, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

## **22. CONFLICT OF INTEREST**

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

## **23. NO LEASE**

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

## **24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

Meatpacking BID represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Meatpacking BID to receive a license or public contracts. The Federal Employer Identification Number of Meatpacking BID is 20-8540196.

## **25. RESERVATION OF RIGHTS AND INTERESTS**

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

B. Any statement or release made to the public relating to the subject of this License must be approved in advance by DOT, which approval shall not be unreasonably delayed. Meatpacking BID will conspicuously acknowledge the involvement of DOT in any such statement or release. If DOT, in its reasonable discretion, finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, Meatpacking BID and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If Meatpacking BID publishes a work discussing any aspect of performance of any service covered by this License, Meatpacking BID will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-

exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

## **26. WAIVER OF JURY TRIAL**

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

## **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

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

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

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

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

(4) If Meatpacking BID commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, Meatpacking BID shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, Meatpacking BID shall consent to

the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

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

## **28. CLAIMS AND ACTIONS THEREON**

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

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

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

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

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

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

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

### **31. TRADEMARK**

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

### **32. INFRINGEMENTS**

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

### **33. ANTI-TRUST**

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

### **34. EMINENT DOMAIN AND PUBLIC USE**

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

### **35. DEVELOPMENT PURPOSES**

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

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

### **36. SEVERABILITY**

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

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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

### **38. MODIFICATION**

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

### **39. ENTIRE AGREEMENT**

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

### **40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 2019:

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

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

Dated:

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

Jeffrey C. LeFrancois  
Executive Director  
Meatpacking District Management Association, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

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

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

On this            day of                   , 2019 before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises of the Department of Transportation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

On this            day of                   , 2019 before me personally came Jeffrey C. LeFrancois, who, being duly sworn by me did depose and say that he is the Executive Director of the Meatpacking District Management Association, Inc., the corporation described in and who executed the foregoing instrument and he acknowledged that he executed the same in his official capacity and for the purposes mentioned therein.

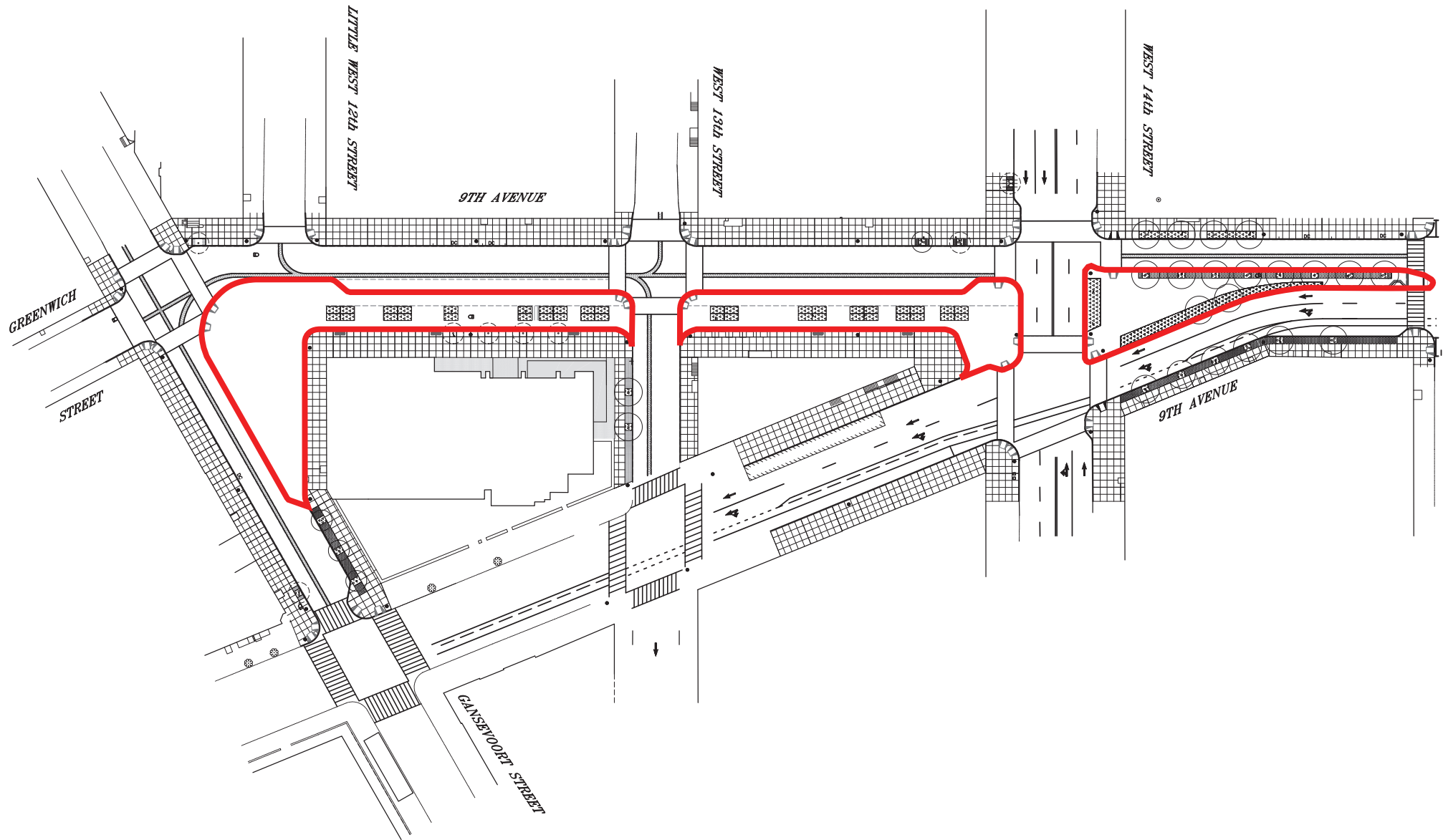
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Notary Public



## Exhibit A

[Map of Licensed Plaza, which includes total acreage]



## Gansevoort Plaza

 Licensed Plaza = Approximately 29,284 Sq. Ft.

## Exhibit B

### Gansevoort Plaza List of Amenities (all quantities listed below are approximations)

#### **Paving**

- DOT standard asphaltic concrete paving, 3” wearing course on concrete base (5,100 Square Yards)
- DOT standard concrete paving, 4” thickness, special scoring, and pigmented (32,020 Square Feet)
- DOT standard concrete paving at pedestrian drop curbs, 7” thickness, pigmented, (1,600 Square Feet)
- DOT standard steel faced concrete curb, 24” deep (410 Linear Feet)
- DOT standard granite curb (3,240 Linear Feet)
- DOT standard granite slab pavement (980 Square Yards)
- DOT standard granite block pavement – Salvaged, Cleaned and Reinstalled (132,900 blocks)
- DOT standard granite block pavement - New (255,800 blocks)
  - Mesabi black color (61%)
  - Charcoal black color (39%)

#### **Landscaping**

- 2’-0” x 10’-0” Fixed Steel Planters (460 linear feet)
- 2’-0” x 10’-0” Movable Steel Planters (40)
- Stainless Steel Tree Guards (Chelsea Improvement Co. style) (220 linear feet)
- Urban planting mix (680 Cubic Yards)
- Trees planted (31)
- Plantings
  - Shrubs planted (203)
  - Perennials / Groundcovers planted (3907)

#### **Furnishings**

- ‘Parc Centre’ Chair without Arms, color White, by Landscape Forms (240)
- ‘Parc Centre’ Table, 24” Dia. / 29.5” Height, color Black, by Landscape Forms (60)
- ‘Ocean Master Classic’ Alum. Parasol, 9’ Octagon, color Jockey Red, by Tuuci (60)
- Black CityBench (backed) (5)
- DOT standard granite security blocks (55)

#### **Infrastructure**

- Reduced Pressure Zone (RPZ) device with associated plumbing (1)
- Water meter with remote and structure (1)
- Ground Hydrant with 1” Hose Connection (4)
- DPR Cast Iron Water Valve Box (6)
- DOT standard Davit Light Pole with Stad Luminaire (8)

- DOT standard Bishops Crook Light Pole with “Tear Drop” Luminaire (36)
- Electric meter, cabinet, panel board, distribution, and multiple receptacles:
  - Lockable stainless steel enclosure for utility service and distribution panel (1)
  - Freestanding, stainless steel, lockable, event box outlets enclosure (1)
  - Freestanding company switch enclosure (1)
  - Panelboards (2)
  - Electricity metering, 200 A utility meter (1)
  - Event box receptacles – 20A (10)

## SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$5,636.64	\$ 22,547.00	\$ 45,093.10

**Exhibit C**  
**PAID SICK LEAVE LAW**  
**CONCESSION RIDER**

**Introduction and General Provisions**

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

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

The PSLL is summarized below for the convenience of the Meatpacking BID.

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

Pursuant to the PSLL and the Rules:

**Applicability, Accrual, and Use**

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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 PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

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

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

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

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

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such

employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

#### Exemptions and Exceptions

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

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

#### Retaliation Prohibited

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

#### Notice of Rights

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



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

### Records

An employer must retain records documenting its compliance with the PSLI for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLI.

### Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLI, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLI has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLI civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSLI is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSLI provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLI may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

# Memo

**To:** All NYC Borough Presidents  
All NYC Community Board Presidents

**From:** Courtney Kaadi  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** May 3, 2019

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with New Era Cap Co, Inc. for the non-exclusive use of city-owned trademarks on merchandise

---

Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with New Era Cap Co, Inc. for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

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

If you have any questions or comments, please contact me by e-mail at [ckaadi@nycgo.com](mailto:ckaadi@nycgo.com).

Best,

Courtney Kaadi

**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> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2019-006
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	

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

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

☒ Different Procedure \* (☒ Sole Source Agreement ☐ Other \_\_\_\_\_)

☐ Negotiated Concession\*

Recommended Concessionaire: New Era Cap Co. Inc. ☒ EIN ☐ SSN # 16-0770131  
 Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Initial Term:</b> to be negotiated  <b>Renewal Option(s) Term:</b> to be negotiated</p> <p><b>Total Potential Term:</b> to be negotiated</p> <hr/> <p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A  <b>Address</b> _____  <b>Borough</b> _____ <b>C.B.</b> _____  <b>Block #</b> _____ <b>Lot #</b> _____  <small>*Attach additional sheet</small></p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>          (Check all that apply)</p> <p align="center">(<input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula: to be negotiated</p>
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**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** \_\_\_\_\_ **Title** \_\_\_\_\_

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

**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 AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with New Era Cap Co., Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

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

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

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with New Era Cap Co., Inc.

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

New Era Cap Co., Inc. is a globally recognized company that is incorporated in New York state in the headwear and apparel department with expertise in headwear for almost all major sports leagues since the 1920's. New Era Cap Co., Inc. continues to be the leading headwear brand with its large fan base spanning across all major sports, entertainment, and lifestyle brands while maintaining the strongest retail placement of any headwear brand. New Era Cap Co., Inc. is the preferred hat vendor for the 9/11 Memorial utilizing the City's marks to successfully highlight the FDNY and NYPD marks for the City's Licensing Program. For these reasons it is in the City's best interest to negotiate a sole source agreement with New Era Cap Co., Inc. This proposed non-exclusive license agreement will not bar opportunities for other types of headwear and apparel manufacturers.

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

NYC & Company Inc./SBS is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with New Era Cap Co., Inc. for the non-exclusive use of City-owned trademarks on headwear and apparel. New Era Cap Co., Inc. holds an agreement for the purpose of testing product interest within its distribution channels as well as customers unique to New Era Cap Co., Inc. During the time when the agreement with New Era Cap Co., Inc. was executed the parties anticipated that the revenue would not exceed administrative costs which are estimated to be \$8,500, however the products released by New Era Cap Co., Inc. were such a success at the 9/11 Memorial, that the royalties for these items exceeded \$14,615.90. It was in the city's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the 9/11 Memorial program would have been so successful and based on the information available at the time there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given that interest in the products has been successful and we now believe it is in the City's best interest to move to a concession agreement and as part of the forward-looking concession, NYC & Company Inc./SBS seeks approval of the FCRC to negotiate a concession agreement with New Era Cap Co., Inc. that includes the excess revenue from the non-concession agreement. We intend to bring this

matter before the FCRC on June 12<sup>th</sup>, 2019 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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

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

- ☐ The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

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

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with New Era Cap Co., Inc. (“New Era”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with New Era Cap Co., Inc to the FCRC for approval.

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

**June 12<sup>th</sup>, 2019**

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

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

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

# Memo

**To:** All NYC Borough Presidents  
All NYC Community Board Presidents

**From:** Courtney Kaadi  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** May 3, 2019

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Greenlight, LLC. for the non-exclusive use of city-owned trademarks on merchandise

---

Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Greenlight, LLC. for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

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

If you have any questions or comments, please contact me by e-mail at [ckaadi@nycgo.com](mailto:ckaadi@nycgo.com).

Best,

Courtney Kaadi



**(Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)**

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services		<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise	
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A		<b>CONCESSION IDENTIFICATION #</b> NYCCO-2019-004	
<b>SELECTION PROCEDURE</b> (* City Chief Procurement Officer approval of CPSR required) <input type="checkbox"/> Competitive Sealed Bids (CSB) <span style="float:right;"><input type="checkbox"/> Competitive Sealed Proposals (CSP)*</span> <input checked="" type="checkbox"/> Different Procedure * ( <input checked="" type="checkbox"/> Sole Source Agreement <input type="checkbox"/> Other _____) <input type="checkbox"/> Negotiated Concession*  Recommended Concessionaire : Greenlight, LLC <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 01-0719778 Attach Memo(s) *			
<b>CONCESSION AGREEMENT TERM</b>  Initial Term:                  to be negotiated Renewal Option(s) Term:      to be negotiated to be negotiated  Total Potential Term:           to be negotiated		<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: to be negotiated	
<b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ <small>*Attach additional sheet</small>			
<b>CONCESSION TYPE</b> (Check all that apply)  > Significant Concession: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Basis: <input type="checkbox"/> Total potential term =>/>10 years <input type="checkbox"/> Projected annual income/value to City >\$100,000 <input type="checkbox"/> Major Concession  > Major Concession: <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.			
<b>NOTIFICATION REQUIREMENTS</b>  Subject concession will be awarded by CSB or CSP. <span style="float:right;"><input type="checkbox"/> YES   <input checked="" type="checkbox"/> NO</span>  If YES, check the applicable box(es) below: <input type="checkbox"/> The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance. <input type="checkbox"/> The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.  <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation. <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.  If NO, check the applicable box below: <input checked="" type="checkbox"/> The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure. <input type="checkbox"/> The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of			

- ☐ the FCRC to waive advance written notice to each affected CB/BP.
- ☐ 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** \_\_\_\_\_ **Title** \_\_\_\_\_

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

**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 AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Greenlight, LLC pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

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

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

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Greenlight, LLC.

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

Greenlight, LLC produces die cast toy and model cars and accessories in all sizes and scales. They have been an authorized licensee of the City's Licensing Program since October 1<sup>st</sup>, 2013, and their existing contract is set to expire on December 31<sup>st</sup>, 2019. Greenlight, LLC has been an excellent licensee for the City's Licensing Program and has maintained good standing with the City throughout their agreement. Greenlight, LLC maintains relationships with big box retailers such as Walmart and Target, which gives them the unique ability to place products within these distribution channels where others are not able to do so, giving our brands national placement. Therefore, it is in the City's best interest to continue the relationship with Greenlight, LLC. This proposed non-exclusive license agreement will not bar opportunities for other types of toy manufacturers.

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

NYC & Company Inc./SBS is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Greenlight, LLC for the non-exclusive use of City-owned trademarks on merchandise including die cast toy's and model cars etc. We intend to bring this matter before the FCRC on June 12<sup>th</sup>, 2019 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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

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

- ☐ The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

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

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Greenlight, LLC (“Greenlight”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Greenlight to the FCRC for approval.

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

**June 12<sup>th</sup>, 2019**

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

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

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

# Memo

**To:** All NYC Borough Presidents  
All NYC Community Board Presidents

**From:** Courtney Kaadi  
NYC & Company Inc.

**CC:** Tia Pierce  
Department of Small Business Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** May 3, 2019

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Gennaro Jewelers, Inc. for the non-exclusive use of city-owned trademarks on merchandise

---

Dear NYC Borough Presidents and NYC Community Board Presidents:

Pursuant to §1-16 of the Concession Rules of the City of New York, this is to notify the affected Borough Presidents and Community Boards that NYC & Company Inc., on behalf of the NYC Department of Small Business Services, intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Gennaro Jewelers, Inc. for a non-significant concession for the non-exclusive use of city-owned trademarks on merchandise.

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

If you have any questions or comments, please contact me by e-mail at [ckaadi@nycgo.com](mailto:ckaadi@nycgo.com).

Best,

Courtney Kaadi

**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> NYC & Company on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2019-005
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	

<b>SELECTION PROCEDURE</b> (* City Chief Procurement Officer approval of CPSR required)	
<input type="checkbox"/> Competitive Sealed Bids (CSB) (CSP)*  <input checked="" type="checkbox"/> Different Procedure * ( <input checked="" type="checkbox"/> Sole Source Agreement <input type="checkbox"/> Other _____)  <input type="checkbox"/> Negotiated Concession*	<input type="checkbox"/> Competitive Sealed Proposals   Recommended Concessionaire: Gennaro Jewelers <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # 11-2592876 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>To be negotiated</u>
<b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ <small>*Attach additional sheet</small>	

<b>CONCESSION TYPE (Check all that apply)</b>	
<b>&gt; Significant Concession:</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES Basis:</b> <input type="checkbox"/> Total potential term =>10 years <input type="checkbox"/> Projected annual income/value to City >\$100,000 <input type="checkbox"/> Major Concession	
<b>&gt; Major Concession:</b> <input checked="" type="checkbox"/> <b>NO</b> <input type="checkbox"/> <b>YES</b> - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.	

<b>NOTIFICATION REQUIREMENTS</b>	
<b>Subject concession will be awarded by CSB or CSP.</b> <span style="float: right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span>	
<b>If YES, check the applicable box(es) below:</b> <input type="checkbox"/> The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance. <input type="checkbox"/> The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules. <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation. <input type="checkbox"/> The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.	
<b>If NO, check the applicable box below:</b> <input checked="" type="checkbox"/> The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.	

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

**AUTHORIZED AGENCY STAFF**

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

**Name** \_\_\_\_\_ **Title** \_\_\_\_\_

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

**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 AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

NYC & Company Inc. on behalf of New York City Department of Small Business Services (SBS), intends to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a non-exclusive, sole source license agreement with Gennaro Jewelers, Inc. pursuant to Section 1-16 of the Concession Rules of the City of New York (different procedures) for the reasons listed in Section (B)(2) below.

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

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

To be determined at a later date- when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an agreement with Gennaro Jewelers, Inc.

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

Gennaro Jewelers Inc. produces precious metal and plated with precious metal, jewelry and watches. They have been an authorized licensee of the City's Licensing Program since May 23<sup>rd</sup>, 2007, and their existing contract expires on December 31<sup>st</sup>, 2019 (Licensee is permitted 90 days after termination date to sell its remaining inventory of the Products). Throughout the duration of Gennaro's term, Gennaro has proven to be a strong licensee within the City's Licensing Program, and they continue to remain in good financial standing with the City. Over the term of their previous licenses, Gennaro developed over 50 unique molds and dyes that were created to the specification of the City and consistent with the City's trademarks. These molds and dies cost Gennaro Jewelers approximately \$90,000. With no other licensee in this category it is in the City's best interest to continue the relationship with Gennaro. The items that are the subject of the proposed license would be for sale to the general public as well as specialty versions sold to present and past members of the NYPD. This proposed non-exclusive license agreement will not bar opportunities for other types of jewelry, shields and watches from other manufacturers, however the likelihood of other manufacturers investing such large amounts into developing the specific dyes and molds similar to what Gennaro Jewelers has created is not likely.

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

NYC & Company Inc/SBS is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules and the City of New York, to negotiate a sole source agreement with

Gennaro Jewelers, Inc. for the non-exclusive use of City-owned trademarks on precious metal and plated with precious metal, shields, jewelry and watches. We intend to bring this matter before the FCRC on June 12<sup>th</sup>, 2019 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step 2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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

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

- ☐ The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- ☐ An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- ☐ The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- ☐ DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

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

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee (“FCRC”) authorizes the NYC & Company, Inc. on behalf of New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with Gennaro Jewelers, Inc. (“Gennaro”) for the non-exclusive use of city-owned trademarks on merchandise.

**BE IT FURTHER RESOLVED**, that NYC & Company, Inc. on behalf of SBS shall submit the License Agreement SBS proposes to enter into with Gennaro to the FCRC for approval.

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

**June 12<sup>th</sup>, 2019**

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

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

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