

LICENSE AGREEMENT

BETWEEN

**STATUE CRUISES, LLC**

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

*for*

FOR THE OPERATION AND MAINTENANCE OF A COMMERCIAL FERRY SERVICE  
TO THE STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND FROM  
THE BATTERY,

MANHATTAN, NEW YORK

**M5-E-M**

DATED: \_\_\_\_\_, 2021

**Commented** [FD (1)] : New update to match other FCRC documents

## **TABLE OF CONTENTS**

GRANT OF LICENSE .....	4
DEFINITIONS .....	5
TERM OF LICENSE.....	8
PAYMENT TO CITY .....	10
RIGHT TO AUDIT .....	15
ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS.....	15
UTILITIES .....	15
INFLAMMABLES.....	16
OPERATIONS .....	16
SECTION 10 INTENTIONALLY OMITTED .....	21
IMPROVEMENT AND/OR CORRECTION IN OPERATIONS .....	21
MAINTENANCE, SANITATION, AND REPAIRS .....	22
EQUIPMENT .....	24
EXPENDABLE OR PERSONAL EQUIPMENT .....	24
EQUIPMENT AND CONDITION UPON SURRENDER.....	25
BONDS, CAPITAL PROJECTS, SUSPENSION & SECURITY .....	25
RESERVATION FOR PARKS SPECIAL EVENTS.....	26
PROHIBITION AGAINST TRANSFER .....	27
ASSIGNMENTS AND SUBLICENSES .....	27
ALTERATIONS.....	28
COMPLIANCE WITH LAWS.....	28
NON-DISCRIMINATION .....	29
NO WAIVER OF RIGHTS .....	29
INDEMNIFICATION .....	29
WAIVER OF COMPENSATION .....	30
WORKERS' COMPENSATION AND INSURANCE .....	30

INVESTIGATIONS .....	35
CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE.....	38
WAIVER OF TRIAL BY JURY .....	38
EMPLOYEES OF LICENSEE.....	39
INDEPENDENT STATUS OF LICENSEE.....	39
CONFLICT OF INTEREST .....	39
PROCUREMENT OF AGREEMENT .....	40
ALL LEGAL PROVISIONS DEEMED INCLUDED .....	40
SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS .....	40
JUDICIAL INTERPRETATION .....	40
MODIFICATION OF AGREEMENT .....	41
EXHIBIT A .....	44
EXHIBIT B .....	45
EXHIBIT C .....	46
EXHIBIT D .....	47
EXHIBIT E.....	48
EXHIBIT F .....	52

**LICENSE AGREEMENT** (“License” or “License Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2021, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10021, and Statue Cruises, LLC (“Licensee”), a limited liability company organized under the laws of the State of Delaware, whose address is 1 Audrey Zapp Drive, Jersey City, NJ, 07303.

**Commented [FD (2)] :** From proposed 2021 amendment

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

**WHEREAS**, The Battery in the Borough of Manhattan is property under the jurisdiction and control of Parks; and

**Commented [FD (3)] :** The 2018 amendment stated that all references to Battery Park will be changed to The Battery.

**WHEREAS**, Licensee desires to operate passenger vessels including commercial ferry service for the transportation of passengers between The Battery and Liberty and Ellis Islands pursuant to authorizations from appropriate Federal, State and City agencies, in accordance with Licensee’s contract with the National Park Service (“NPS”) which may be amended from time to time (“NPS Agreement”) and the terms set forth herein; and

**WHEREAS**, in connection therewith, the Commissioner desires to provide for the operation and maintenance of three (3) landing facilities and adjacent walkways in The Battery, Manhattan for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governor’s Island and day and night charters of vessels owned, operated or chartered by Licensee for the accommodation and convenience of and use by the public and Licensee wishes to provide same; and

**WHEREAS**, Parks complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) Rules for the selection of concessionaires and has received authorization to enter into a sole source concession agreement with Licensee; and

**WHEREAS**, Parks and Licensee desire to enter into a License Agreement specifying rights and obligations with respect to the operation and maintenance of the Licensed Premises as defined in Section 2.1(j).

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

#### **GRANT OF LICENSE**

**1.1** Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more particularly described in Section 2.1(j) herein, for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry

**Commented [FD (4)] :** Updates are from 2018 amendment

**Commented [FD (5)] :** Statue asked for “structures” to be removed since they don’t currently operate any structures. But since it was added in the 2018/the could operate the kiosk if they choose to Parks requires it to stay in.

service to Governor's Island, and day and night charters of vessels, owned, operated or chartered by Licensee, for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License. Parks and the Commissioner shall cooperate with Licensee in all reasonable aspects in obtaining such approvals, permits and licenses, including but not limited to executing or authorizing applications for same as may be necessary to permit Licensee to obtain such approvals, permits, or licenses. Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or Commissioner's duly authorized representative, or the relevant City official if the required approval is the City's. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or Commissioner's duly authorized representative.

**1.3** It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, and that Licensee shall not acquire any property interest in the Licensed Premises whatsoever but that during the Term of this License, Licensee shall have the use of the Licensed Premises in order to carry out the purposes herein provided. Except as herein provided, Licensee has the right to occupy and operate the Licensed Premises so long as this License is not terminated by the Commissioner in accordance with the terms hereof.

**1.4** Licensee shall provide, at all times, free access to the Licensed Premises to the Commissioner or Commissioner's representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes. Parks shall provide reasonable prior notice to Licensee of any inspection outside of normal operating hours, unless the inspection is in response to an emergency condition.

### **DEFINITIONS**

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

(a) "City" shall mean the City of New York, its departments and political subdivisions.

(b) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or Commissioner's designee.

(c) "Comptroller" shall mean the Comptroller of the City of New York.

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

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

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

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

(f) “Parks” shall mean the New York City Department of Parks & Recreation.

(g) “Substantial Completion” or “Substantially Complete” shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed, and that the improvement may be utilized by the public.

(h) “Final Completion” or “Finally Complete” shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year. Operating Year 1 shall refer to the period between October 1, 2021 to September 30, 2022. Operating Year 2 shall refer to the period between October 1, 2022 to September 30, 2023. Operating Year 3 shall refer to period between October 1, 2023 to February 29, 2024.

**Commented [FD (6)] :** Update adapted from proposed 2021 amendment

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, three (3) landing slips as authorized in writing by Parks, currently numbered 3, 4, and 5, and adjacent walkways located in The Battery, Manhattan and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping, and upon amendment of the license agreement between Parks and The Battery Conservancy (“TBC”) for the operation and maintenance of a food and beverage concession in the New Amsterdam Plein & Pavilion (“Pavilion”), in the Battery, Manhattan, and with Parks’ written approval, and with agreement by Licensee as per Section 9.30, the information wing(s) of the Pavilion as denoted in Exhibit D attached hereto. Parks may authorize Licensee to utilize a different landing slip from slip(s) currently authorized, subject to availability, provided however that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

**Commented [FD (7)] :** Updates are from 2018 amendment, with addition from Statue marked below.

**Commented [FD (8)] :** Statue asked for this addition and Parks is okay with it.

(k) “Capital Improvements” shall mean all construction, reconstruction or renovation

of the Licensed Premises, including architectural, engineering, and design fees and permitting costs necessary to implement such construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include the installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Licensed Premises.

(l) (i) "Gross Receipts" shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks Merchandise as defined below) or services of any kind at The Battery, provided that Gross Receipts 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 Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

Commented [FD 9] : Updates are from 2018 amendment

Commented [FD 10] : Statue requested that this be changed to "The Battery." It is Parks' understanding that we cannot accept their suggestion as they should not be selling anything else at the Licensed Premises.

(ii) Gross Receipts shall include receipts by Licensee from all sponsorships at the Licensed Premises, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 19 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however, that any gratuities transmitted by Licensee directly or indirectly to employees shall not be included within Gross Receipts. Licensee shall provide documentation satisfactory to Parks to prove that such gratuities were paid to employees in addition to their regular salaries.

(v) Gross Receipts shall include all funds received for services rendered by the Licensee plus any deposits made in relation to said services.

(m) “Special Events” shall mean any private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Commissioner for Commissioner’s prior approval plans for any such Special Events at the Licensed Premises which will result in the closing of the entirety of the Licensed Premises to the public during regular hours of operation.

(n) “Parks Merchandise” shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks’ discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

Commented [FD (11)]: From 2018 Amendment

### **TERM OF LICENSE**

3.1 This License shall become effective upon Parks giving written notice to proceed to Licensee, following registration with the Comptroller. This License shall commence on the date listed on the notice to proceed ~~the Licensee receiving written notice to proceed from Parks~~ (“Commencement Date”) and shall terminate upon the earliest occurrence of one of the following:

- (a) February 29, 2024;
- (b) termination by Licensee of this License upon an NPS directive;
- (c) termination of Licensee’s NPS Agreement (“Termination Date”).

Commented [FD (12)]: From proposed 2021 amendment

The period of time from the Commencement Date to the Termination Date, shall be the License term (“Term”). In no event shall the Concession become effective prior to registration with the Comptroller.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner in the Commissioner’s sole discretion, at any time, however, such termination shall not be arbitrary and capricious. Such termination shall be effective twenty-five (25) days after written notice is sent to Licensee. In the event of such early termination, Licensee shall continue to make payments as set forth in Section 4 herein, up to and including but not beyond said early termination date. Upon early termination, Parks shall submit a final bill to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given, this License shall terminate as described in Section 3.1 of this agreement.

3.3 (a) Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice within thirty (30) days from the mailing thereof, or such longer period required to cure such breach if Licensee has



expeditiously commenced curing such breach and is diligently prosecuting such cure to completion, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate upon the written notice of Commissioner to Licensee advising that the License is terminated. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows within one (1) year of the initial breach, other than nonmaterial breaches or omissions, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) day notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to limit the Commissioner's right to terminate this License pursuant to Section 3.2 hereof.

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

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

**3.6** Licensee shall, on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to remove all possessions from the Licensed Premises on or before the expiration or termination date.

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

**Commented [FD(13)] :** Updates are from 2018 amendment

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

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

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date or in the event of earlier termination, to the effective date of termination; and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relet the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relet any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such reletting, and no such failure to relet or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

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

**3.10** Should NPS require Licensee to terminate this License in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to Licensee, Parks agrees not to pursue any claims for lost revenues related to such early termination of said License.

Commented [FD (14)]: Update is from 2018 amendment

#### **PAYMENT TO CITY**

**4.1** (a) Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of gross receipts derived from the operation of the Licensed Premises:

Operating Year	Minimum Annual Fee	Percentage of Gross Receipts
Operating Year 1: October 1, 2021 to September 30, 2022	\$2,500,000.00	10%
Operating Year 2: October 1, 2022 to September 30, 2023	\$2,500,000.00	10%
Operating Year 3: October 1, 2023 to February 29, 2024	\$1,041,666.65	10%

**Commented** [FD (15)] : Update adapted from proposed 2021 amendment

**(b)** In the event of the suspension of Licensee's ferry service for a period of time (which time shall be determined by Parks based on all the relevant circumstances) due to circumstances beyond the control of Licensee, including, without limitation, acts of God, war, or enemies, or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty, the minimum annual fee shall be reduced on a pro rata basis.

**4.2** The minimum annual fee for each Operating Year shall be paid to the City in equal monthly installments on the first (1<sup>st</sup>) day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments attached as Exhibit A. If at any time Licensee's annual percentage fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the twentieth (20<sup>th</sup>) day of each succeeding month in such Operating Year.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or the Commissioner's right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the

maximum rate permitted under such law or regulation.

**4.4** (a) Upon affixing its signature to this License, Licensee shall deposit with the City the amount of two hundred and fifty thousand dollars and no cents (\$250,000.00) payable to the City of New York, as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

(b) Security Deposit shall consist of cash, a certified check payable to the City of New York, an irrevocable letter of credit naming the City of New York as beneficiary, an interest-bearing bond or other negotiable interest-bearing instrument payable to the City of New York which the Comptroller shall approve as being of equal market value with the sum so required. The Security Deposit shall be held by the City without liability for interest thereon, as security for the full and faithful performance by the Licensee of each and every term and condition of this license on the part of the Licensee to be observed and performed. The Licensee shall collect or receive annually any interest or income earned on such interest-bearing bond or other negotiable interest-bearing instrument less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after five(5) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

**4.5** (a) On or before the thirtieth (30th) day following each month of each Operating Year, Licensee shall submit to Parks, in a form reasonably satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. Licensee shall also submit a summary report of Gross Receipts for each Operating Year within sixty (60) days of the end of each Operating Year of this License. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the categories including, without limitation, the following categories:

NPS Statue of Liberty Ferry Gross Receipts from rates and charges for tickets for ferry service

Service	between the Licensed Premises and Liberty Island and Ellis Island; and
NPS Island Cruise Service	Gross Receipts from rates and charges for tickets for NPS sightseeing cruises that begin and/or terminate <del>at</del> the Licensed Premises; and
Other Ferry Operations	Gross Receipts from rates and charges for tickets for all other ferry operations that begin and/or terminate at the Licensed Premises; and
Miscellaneous	All other Gross Receipts generated at and realized from Licensee's operation of the Licensed Premises.

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

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state, and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from gross receipts or from the compensation due under this License.

**4.6** On or before the thirtieth (30th) day following each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee. Parks shall keep such statement confidential except as required by law or by a court of competent jurisdiction.

**4.7** (a) Licensee, during the Term of this License, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be acceptable to Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the record-keeping procedures of the Licensee prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of six (6) years.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of

the Licensee to maintain adequate internal controls or to keep any of the records as required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one (1) month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License in accordance with and subject to the terms of Section 3.3(a) provided that Licensee shall have the opportunity to contest such claimed discrepancy and shall not be deemed in default unless and until such discrepancy is confirmed through such contest, and provided further that an inadvertent error on the part of Licensee shall not be deemed a default if Licensee promptly pays to Parks any additional monies, payments, fees, or charges due. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. Licensee shall pay any assessment based upon such reasonable projections within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a material default hereunder.

**4.8** In the event Parks determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.5 through 4.7 hereinabove Licensee may be subject to a charge of \$500.00 with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty (30) days of such notice.

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

City of New York Department of Parks & Recreation Revenue Division  
The Arsenal - Room 407  
830 Fifth Avenue  
New York, NY 10021

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

**4.11** At Parks' request and upon (1) execution of a new agreement with TBC (the "New TBC Agreement") providing that TBC may receive a portion of the license fee payments from this License Agreement and (2) subject to any additional City approvals which may be necessary, including FCRC approval and registration of the New TBC Agreement, Licensee shall be required to pay portions of the license fee payments to TBC, which funds shall be used by TBC for the operation and maintenance of the area in and around the Pavilion and provide additional maintenance support to The Battery as shall be set forth in more detail in the New TBC Agreement.

Commented [FD 16]: From 2018 amendment

## **RIGHT TO AUDIT**

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

**Commented [FD (17)] :** Updates are from 2018 amendment

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

**Commented [CK (18)] :** Deleting this as its stated in 5.3

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

**5.3** Notwithstanding anything in this License Agreement, 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.

## **ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS**

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

## **UTILITIES**

**7.1** Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises, including all Department of Environmental Protection ("DEP") water and sewer charges. Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain, all utility lines, meters and supplies

of power necessary for the proper operation of this license and pay all utility costs. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges (collectively, "Facilities"). Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities having jurisdiction over the construction and operation of the Licensed Premises. Parks shall cooperate as may be necessary to facilitate Licensee obtaining necessary permits and approvals for such utility lines and for connecting any new services to existing utility lines, whether within or without the Licensed Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. Licensee shall remove any unsuitable existing materials, as required.

**7.2** Licensee shall be responsible for payment of all utility costs incurred at the Licensed Premises during the Term of this License, however Licensee shall have the right to provide separate metering for its sublicensees and upon notice to the City of such separate metering City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs.

**7.3** Licensee, at its sole cost and expense, shall maintain and repair as needed all utility systems and connections, including but not limited to underground utility lines from the street to the Licensed Premises.

### **INFLAMMABLES**

**8.1** Except for properly stored gasoline, and other substances approved by the United States Coast Guard ("USCG") in the operation of passenger vessels, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

### **OPERATIONS**

**9.1** Licensee, at its sole cost and expense, shall operate this License for the daily accommodation of NPS, Parks and the public, on a year-round basis and at such times of day as the Commissioner shall reasonably prescribe and as required by the NPS Agreement and as otherwise permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in their "as-is" condition and agrees to use its best efforts to obtain necessary permits and approvals related to all operations at the Licensed Premises. Parks agrees to use its reasonable efforts to assist Licensee by directing Licensee to appropriate governmental agencies having jurisdiction and by taking such other actions and cooperating with Licensee to obtain such approvals as may be reasonably necessary. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks. Licensee shall provide the necessary number of



personnel having the requisite skills together with the necessary personal equipment and consumable supplies and Licensee shall perform the following services at the Licensed Premises:

(a) operate and manage the landing facilities and adjacent walkways for embarking and discharging passengers related to Licensee's ferry and passenger vessel operations, including but not limited to the NPS Statue of Liberty Concession, the NPS Island Cruise Service, sightseeing cruises, day and night charters of vessels and other ferry operations;

(b) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair in accordance with Section 12 herein.

**9.2** Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all its operations at the Licensed Premises seven (7) days a week for such hours as the Commissioner shall reasonably approve. Licensee's employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner. Annexed hereto and made a part hereof as Exhibit B is the Schedule of Approved Hours and Fees, including the schedule of sailings for Operating Year 1. Licensee shall notify Commissioner promptly of any permanent changes to its scheduled operations as may be required by NPS. All operational plans, including delivery schedules, rubbish removal schedules, and hours of operation are subject to Parks' approval. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

Commented [FD (19)]: New update

Parks is a governmental agency which has responsibilities to the public to make efforts to insure that operations on premises owned or controlled by it are conducted in a manner which is consistent with fair treatment to the consuming public, including pricing which reflects regularly available competitive market prices at nearby locations, subject to reasonable adjustments for variations in costs and market factors. Parks acknowledges that Licensee is a concessioner of NPS under the terms of a concession contract with NPS ("NPS Agreement") and that as part of that concession relationship, NPS may require modification of schedules and prices, require Licensee to follow recommendations and give reasons why recommendations should be followed, but that the prices ultimately posted by Licensee are subject to NPS approval. Parks acknowledges and accepts the rates, schedule, and formula for ferry rate increases outlined in Exhibit B. In the event that the Licensee requests a ferry rate change beyond the CPI, NPS and Parks must mutually agree to any change beyond CPI. NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

**9.3** (a) Licensee shall notify the Commissioner within five (5) business days whenever Licensee tentatively schedules any private use of the Licensed Premises (e.g., private parties) which would close the entire Licensed Premises to the general public. In no event shall Licensee close the entire Licensed Premises to conduct private activities during public hours. In addition, Parks may make use of the Licensed Premises, as provided in Section 17 herein.

(b) In the event of extreme weather conditions including heavy snowfall, hurricanes, or floods, which prohibit the use of the whole or a substantial part of the Licensed Premises for the purposes as provided in this License, Licensee may close the Licensed Premises. In the event of such a closing as provided in this Section 9.3(b), Licensee shall notify the Commissioner within

at least twelve (12) hours of closing the Licensed Premises ~~as possible.~~

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

**9.5** Licensee shall submit to Commissioner for Commissioner's approval, not less than sixty (60) days before the first day of each Operating Year, the approved NPS schedules for the coming Operating Year concerning operating days and hours for the services and products to be provided under this License during the forthcoming Operating Year. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days, hours, fees and rates. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks. Parks acknowledges and accepts the schedule outlined in Exhibit B. In the event that the Licensee requests a schedule change, NPS and Parks must mutually agree to any change. NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

**9.6** Licensee shall record all transactions involved in the operation of this License on cash registers and keep books and records as required by Section 4.7 of this License Agreement.

**9.7** Licensee warrants that all services provided, merchandise sold and vending operations provided pursuant to this License shall be of high grade and good quality.

**9.8** Licensee shall not use or permit the use of any polystyrene foam products in connection with services or merchandise offered under this License.

**9.9** An officer of the Licensee shall personally operate this License or employ an operations manager(s) ("Manager(s)") possessing appropriate qualifications to manage operations at the Licensed Premises in a manner that is satisfactory to the Commissioner in Commissioner's reasonable discretion. The Manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sub-licensee whenever reasonably demanded by Commissioner, provided that the Commissioner shall not act arbitrarily or capriciously in making such demand.

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

**9.11** Licensee shall, at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

(a) collect and safeguard all monies generated under this License;

(b) maintain the Licensed Premises;

(c) conduct and supervise all activities to be engaged in at the Licensed Premises including but not limited to the provision of qualified food and guest service personnel and cashier(s); and

(d) securing the Licensed Premises.

**9.12** Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary or desirable for its operations under this License. Licensee shall operate and play such sound equipment and music in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq. thereof, and only at a sound level acceptable to the Commissioner. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as required by law for such music or music programming in connection with its operation of the Licensed Premises.

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

**9.14** Licensee shall provide access to the Licensed Premises to disabled members of the public. This accessibility shall be clearly indicated by signs and included in advertising by Licensee when practicable. Licensee shall include in its advertising and promotion program, provided for in Section 9.22 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall be in compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

**9.15** Licensee shall, at its sole cost and expense, install a CCTV monitoring system at the Licensed Premises on a twenty-four (24) hour per day basis. Such CCTV monitoring system shall be subject to the approval of Parks, the New York City Police Department ("NYPD"), and any other relevant agencies.

**9.16** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring at the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft, which may be asserted against Licensee with respect to the Licensed Premises of which Licensee becomes aware. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage (including all insured claims for loss or damage) pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

**9.17** Licensee shall promptly notify Parks' personnel of any unusual conditions at the Licensed Premises that may develop in the course of the operation of this License of which License becomes aware such as, but not limited to, fire, flood, casualty and substantial damage

of any character.

**9.18** Licensee shall comply with all DEP directives during City drought restrictions.

**9.19** Intentionally omitted.

**9.20** Licensee shall maintain close liaison with Parks' Enforcement Patrol, NYPD, and other police officials, and cooperate with all efforts to remove illegal vendors from the Licensed Premises and adjacent areas. Licensee shall report illegal activity on the Licensed Premises to Parks, NYPD, or other police officials immediately upon Licensee becoming aware of such activity.

**9.21** The Commissioner shall have the right to reasonably approve the days and times on which deliveries to Licensee may be made.

**9.22** (a) Licensee may establish an advertising and promotion program, however Licensee shall not place any advertisements on the exterior of the Licensed Premises or on any building. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter except advertising matter which, in the Commissioner's sole discretion, is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals or conduct. Licensee may release news items to the media as it sees fit. If the Commissioner in Commissioner's reasonable discretion, however, finds any releases to be unacceptable, then Licensee shall cease or alter such releases as directed.

(b) Licensee may, subject to the prior reasonable approval of the Commissioner as to design and distribution, such approval not to be unreasonably withheld, print or arrange for the printing of advertising, signs, programs or brochures containing advertising matter, except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks or the City of New York. Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the prior written approval of the Commissioner.

(c) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License, at locations which do not interfere with operations at the Licensed Premises determined through consultation with the Licensee.

(d) Under no circumstances shall Licensee be permitted to place advertisements on the Licensed Premises. Licensee shall not advertise any product brands on the Licensed Premises without Parks' prior approval.

**9.23** (a) Licensee shall display at the Licensed Premises, in an appropriate manner, all permits and licenses required to operate the Licensed Premises..

(b) Any sign posted by Licensee on the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner, shall be appropriately located, and shall state that the Licensed Premises is a New York City municipal concession operated by Licensee. In addition, Licensee may display signage for the purpose of advertising upcoming events at the Licensed Premises, the design, location, size and type of which shall be aesthetically appropriate and subject to the reasonable approval of Parks and where appropriate, the NYC Art Commission.

**9.24** Licensee shall at its sole cost and expense post throughout the Licensed Premises such signs as Licensee determines are necessary to direct patrons to its services and facilities. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, as well as any other signs which Licensee desires to place or permit to be placed on the Licensed Premises, are subject to Commissioner's reasonable prior approval.

**9.25** The sale or advertising of alcohol, cigarettes, cigars, or any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is strictly prohibited. In addition, the use of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products smoking, or the use of electronic cigarettes at the Licensed Premises, in any building is strictly prohibited, and the Licensee will be required to shall adhere to and enforce this policy.

**Commented [FD (20)] :** Updates are from 2018 amendment

**9.26** The sale of beverages from glass bottles at the Licensed Premises is strictly prohibited. All beverages shall be decanted into non-glass, shatter-proof containers before being served.

**9.27** Intentionally omitted.

**9.28** Licensee shall arrange for regular pest control inspections and exterminations at the Licensed Premises. To the extent that the Licensee applies pesticides to any property owned or leased by the City, Licensee or any subcontractor hired by Licensee shall comply with Chapter 12 of the New York City Administrative Code.

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

**Commented [FD (21)] :** Update is from 2018 amendment

**9.30** Contingent upon Parks' prior written approval, Licensee may operate a visitor information, ticket, and merchandise booth in the information wing(s) of the New Amsterdam Plein & Pavilion in Peter Minuit Plaza as denoted in Exhibit D.

**Commented [FD (22)] :** From 2018 amendment

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

**Commented [FD (23)] :** From 2018 amendment

## **SECTION 10 INTENTIONALLY OMITTED**

### **IMPROVEMENT AND/OR CORRECTION IN OPERATIONS**

**11.1** Should the Commissioner reasonably decide that Licensee is not operating the Licensed Premises in a manner consistent with a typical public landing and docking facility in the same

segment of the market, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. Licensee's failure to comply with such written notice or to respond in a manner satisfactory to Commissioner within thirty (30) days from the mailing of said notice shall be deemed a default under this License, and Commissioner may terminate this License in accordance with Section 3.3(a) hereof.

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

**Commented [FD (24)] :** Updates are from proposed 2021 amendment

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

**12.1** Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, put, keep, repair, preserve, and maintain in good order the Licensed Premises, including all batter piles, mooring bits, wales, chocks, paths, walkways, and signage so as to maintain the Licensed Premises in a manner customary for landing and docking facilities in the same industry. Licensee shall at all times keep the Licensed Premises clean, litter free, neat and, with respect to any food service operations, fumigated, disinfected, deodorized and in every respect sanitary. Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the perimeter of the Licensed Premises), and collect and remove all litter, debris, snow and garbage therefrom. Licensee shall provide for the regular cleaning and maintenance of the perimeter of the Licensed Premises including but not limited to the timely removal of all litter and debris, snow and garbage, perimeter sidewalk and perimeter fence maintenance and repair. Licensee shall repair and maintain in good working order any and all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment.

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

**12.3** No later than thirty (30) days before the end of each Operating Year, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and all Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee during the

forthcoming Operating Year in order to comply with the terms of this License.

**12.4** (a) Licensee shall provide adequate waste receptacles at the Licensed Premises. All waste, garbage, refuse, rubbish and litter which collects upon the Licensed Premises without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises at a frequency satisfactory to the Commissioner, all at the Licensee's sole cost and expense. In performing its duties under this section, Licensee shall comply with all applicable ordinances and programs of the City, state, and federal governments.

(b) Licensee will provide separate receptacles for recyclable items, and shall conform to all New York City, New York State and federal recycling laws as the same may exist from time-to-time.

**12.5** At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted. The condition of the Licensed Premises at the Commencement Date shall be considered acceptable.

**12.6** At its sole cost and expense, Licensee shall remove any and all graffiti which may appear at the Licensed Premises. Such graffiti removal shall be commenced within twenty-four (24) hours from the time Licensee becomes aware of the graffiti and shall continue until such graffiti is removed.

**12.7** Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License, without the express written permission of Parks.

**12.8** At its sole cost and expense, Licensee shall maintain the three landing slips available to them as assigned by Parks (Slips 3, 4, and 5), and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of all litter, debris, and garbage.

**Commented [FD (25)] :** Updates are from proposed 2021 amendment

**12.9** Intentionally omitted.

**12.10** Intentionally omitted.

**12.11** Intentionally omitted.

**12.12** Licensee shall provide adequate staff in order to maintain the Licensed Premises in a manner consistent with a typical public landing and docking facilities operating in the same segment of the market.

**12.13** Licensee shall be responsible for regular pest control inspections and extermination. To the extent Licensee applies pesticides to any property owned or leased by the City, Licensee or any subcontractor hired by Licensee, shall comply with Chapter 12 of the New York City Administrative Code.

**12.14** In the event the Commissioner requires or directs Licensee to undertake any routine

maintenance or repair in order to operate and maintain the Licensed Premises in accordance with Article 11 and Article 12 of this License Agreement, Licensee shall promptly, and in any event within forty-eight (48) hours from the time of written notification by the Commissioner (provided that such maintenance or repair is capable of being completed in such time period) undertake and complete such maintenance or repair. In the event such maintenance or repair may not be completed within such time period, Licensee shall diligently prosecute to completion such maintenance or repairs, subject to unavoidable delays beyond reasonable control of Licensee. Any extension of time for the completion of such maintenance or repair shall be granted at the reasonable discretion of Commissioner. If Licensee fails to complete such routine maintenance or repair within such time period, Licensee shall pay liquidated damages of two hundred fifty dollars (\$250.00) for each day such routine maintenance or repair is not completed.

### **EQUIPMENT**

**13.1** Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, provide, and replace if necessary, all equipment necessary for the operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

**13.2** Commissioner represents that City has title to all Fixed Equipment. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.

**13.3** Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not exercise such option it shall be the responsibility of Licensee to remove such items at its sole cost and expense after the expiration or sooner termination of this License.

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

### **EXPENDABLE OR PERSONAL EQUIPMENT**

**14.1** Licensee shall supply at its own cost and expense all Expendable or Personal Equipment required for the proper operation of this License, and replace same at its own cost and expense when requested by Commissioner.

**14.2** Intentionally omitted.

**14.3** Title to all Expendable or Personal Equipment obtained by Licensee shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such



termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

**14.4** The Equipment to be removed by Licensee pursuant to Section 14.3 above, shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

#### **EQUIPMENT AND CONDITION UPON SURRENDER**

**15.1** Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, shall put, keep, landscape, repair, and preserve in good order Licensed Premises, which shall include sidewalks, and Fixed and Additional Fixed Equipment.

**15.2** Notwithstanding the foregoing, at the expiration or sooner termination of this License, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment to which City holds title, in at least as good a condition as said Licensed Premises, and the Fixed and Additional Fixed Equipment were found by Licensee, reasonable wear and tear excepted.

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

#### **BONDS, CAPITAL PROJECTS, SUSPENSION & SECURITY**

**16.1** To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project, excluding routine maintenance and repairs required to be performed as per Section 12.1, with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other capital undertaking shall be in a form acceptable to Parks. For purposes of this provision a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

**16.2** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term of this License. The U.S. Army Corps of Engineers ("Army Corps"), or other federal or state entity, may also perform work which requires closure of portions of The Battery, including the Licensed Premises. Licensee agrees to cooperate with Parks to accommodate any such work by a City, Army Corps, state, or federal entity and provide

**Commented [FD (26)] :** This is from 2018 amendment, except for the part noted below, which was requested by Statue

**Commented [FD (27)] :** This is an addition from Statue that Parks is fine with.

**Commented [FD (28)] :** From proposed 2021 amendment

public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one (1) week notice of any such work. Parks may temporarily close a part or all of the Licensed Premises to facilitate the completion of a City, Army Corps, state or federal project, as determined by the Commissioner. In the event that Licensee must close the Licensed Premises because of such Parks, Army Corps, state, or federal work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event of full or partial closure of the Licensed Premises or suspension of Licensee's operations at the Licensed Premises, as provided for herein.

**16.3** This License may be suspended in full or in part for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

**Commented** [FD (29) : From proposed 2021 amendment

**16.4** Licensee acknowledges that the City has planned multiple capital construction projects ("Capital Projects") in the vicinity of the Licensed Premises during the Term, including, but not limited to, the renovation of existing slips, north of the Licensed Premises and the reconstruction of the entire length of the pedestrian promenade/wharf south and west of the Licensed Premises, which includes a portion of the Licensed Premises, which will impact the operation of the concession. Subject to Section 16.2 above, Licensee assumes the risk and sole cost and expense of conducting business at the Licensed Premises during any Capital Project.

**Commented** [FD (30) : From proposed 2021 amendment

**16.5** Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

**Commented** [FD (31) : From proposed 2021 amendment

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

**17.1** For the purposes of this Section 17.1 only, the term "Special Event(s)" shall mean any event for which Parks has issued a Special Event Permit at the Licensed Premises. Licensee acknowledges that Parks may arrange for Special Events at the Licensed Premises. Parks agrees to notify Licensee at least thirty (30) days in advance of any such Special Event. Licensee and Parks agree to work cooperatively and in good faith in scheduling Special Events. Any Special Event shall be coordinated with the operations of Licensee. It is expressly understood that this Section 17.1 shall in no way limit Parks' right to itself sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Special Event. Commissioner represents to Licensee that Commissioner has not granted to any other person or entity any license, permit, or right of possession or use which would prevent Licensee in any way from performing its obligations and realizing its rights under this License.

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

#### **PROHIBITION AGAINST TRANSFER**

**18.1** Subject to Sections 19.3 and 19.4 below, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License hereby granted, a majority of the shares of Licensee, or any equipment owned by City as provided herein, or any interest therein, or consent, allow or permit any other person or party to license any part of the Licensed Premises, building, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless reasonably approved in advance in writing by Commissioner., it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

#### **ASSIGNMENTS AND SUBLICENSES**

**19.1** Licensee may assign or sublicense its interest in whole or in part in this License provided that Licensee obtains the Commissioner's prior written approval, as follows:

**19.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than forty-nine percent of stock or voting control of Licensee in the Licensed Premises without the reasonable prior written consent of Commissioner. In connection with such a request, Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth reasonably acceptable to the Commissioner together with a certification that it shall provide management control reasonably acceptable to the Commissioner for the management and operation of the Licensed Premises.

**19.3** As used in this Section 19 the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge of this License, mortgage of this License, transfer of or change in more than 49% in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Section.

**19.4** Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided above. The Commissioner may request any additional information Commissioner deems necessary and Licensee shall promptly comply with such requests.

**19.5** No consent to or approval of any assignment or sublicense granted pursuant to this Section 19 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

### **ALTERATIONS**

**20.1 (a)** “Alteration” shall mean (excepting ordinary repair and maintenance):  
(i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

(ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Licensed Premises.

(b) Licensee may alter Licensed Premises only with the written approval of Parks. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

**Commented [FD (32)] :** Updates are from proposed 2021 amendment

(c) In order to alter Licensed Premises pursuant to subsection (b) of this Section, Licensee must:

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

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

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

(d) Commissioner may, in Commissioner’s discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City’s expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee’s obligations herein or operations hereunder in any respect.

### **COMPLIANCE WITH LAWS**

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

**21.2** Licensee shall not use the Licensed Premises, or any portion thereof, and Licensee shall use diligent efforts not to allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to

**Commented [FD (33)] :** Cut because a more thorough section appears in Section 16.2, with language taken from the proposed 2021 amendment.

occupancy or use during the Term of this License.

### **NON-DISCRIMINATION**

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

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

### **NO WAIVER OF RIGHTS**

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

### **INDEMNIFICATION**

#### **24.1 Licensee Responsibility.**

- (a) The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, or subcontractors.
- (b) The Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss, or injury resulting from any and all of Licensee's operations under this License.
- (c) As between the City and the Licensee, the Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person. Notwithstanding the foregoing, Licensee shall not be responsible for injuries or damages to the extent due to the negligence or intentional misconduct of the City or its officials and employees.
- (d) The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended

Commented [FD (34)] : From 2018 amendment

or adapted in the future which are or become applicable to the Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

#### **24.2 Indemnification and Related Obligations**

- (a) To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys’ fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not the Licensee itself has been negligent) and/or the Licensee’s failure to comply with the law or any of the requirements of this License (collectively, “Losses”). Notwithstanding the foregoing, Licensee shall not be responsible for Losses to the extent due to the negligence or intentional **tortious act or omission** of the City or its officials and employees. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.
- (b) The Licensee’s obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by the Licensee’s obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

**Commented [FD (35)] :** From 2018 amendment

**Commented [KS36] :** Changed to updated language “intentional tortious act or omission”

### **WAIVER OF COMPENSATION**

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

### **WORKERS' COMPENSATION AND INSURANCE**

#### **26.1 Licensee’s Obligation to Insure**

**Commented [FD (37)] :** Adapted from proposed 2021 amendment

- (a) From the date this License Agreement is executed through the date of expiration or termination of the Agreement, the Licensee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein.
- (b) The Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

**26.2 Commercial General Liability Insurance, Protection & Indemnity Insurance, and Pollution Insurance**

Commented [FD (38)]: From 2018 amendment

- (a) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”
- (b) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26.
- (c) If the Licensee maintains Marine Protection & Indemnity Insurance or Vessel Pollution Insurance or both, such policies of insurance shall list the City, including its officials and employees, as additional insured. Such coverage, if maintained, shall be in an amount that is commercially reasonable.

**26.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance**

Commented [FD (39)]: From 2018 amendment

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

**26.4 Commercial Automobile Liability Insurance**

Commented [FD (40)]: From 2018 amendment

With regard to all operations under this License, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for

covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### **26.5 Property Insurance**

- (a) At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an additional insured and loss payee as its interests may appear. Licensee’s replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.
- (b) In the event of any loss to any of the Concession Structures, the Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, the Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim.

**Commented [FD (41)] :** From 2018 amendment

#### **26.6 Flood Insurance**

- (a) At the direction of the Commissioner, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. As of October 1, 2021, Licensee has no building that would require such flood insurance. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.
- (b) In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as a loss payee under all such policies.

**Commented [FD (42)] :** From 2018 amendment, except for the addition marked below which was requested by Statue

**Commented [FD (43)] :** This is an addition from Statue that Parks is fine with.

#### **26.7 General Requirements for Insurance Coverage and Policies**

- (a) Policies of insurance required under this Section 26 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII”, a Standard & Poor’s rating of at least A, a Moody’s Investors Service rating of A3, or a Fitch’s Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City

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- Law Department.
- (b) Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.
  - (c) Wherever this Section requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.
  - (d) There shall be no self-insurance program or self-insured retention exceeding \$10,000 with regard to any insurance required under this Section unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Licensee 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.
  - (e) The City’s limits of coverage for all types of insurance required under this Section shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to the Licensee under all primary, excess and umbrella policies covering operations under this Agreement.
  - (f) All required policies, except Workers’ Compensation, Employer’s Liability, Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

## **26.8 Proof of Insurance**

- (a) Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to or upon execution of this Amendment.
- (b) For Workers’ Compensation, Employer’s Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker’s Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers’ Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers’ compensation and disability benefits insurance coverage.
- (c) For all insurance required under this Section other than Workers’ Compensation, Employer’s Liability, and Disability Benefits Insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee’s policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed “Certification by

Commented [FD (45)]: From 2018 amendment

Insurance Broker or Agent” in the form required by the Commissioner (attached hereto as **Exhibit F**) or certified copies of all policies referenced in such Certificate of Insurance.

- (d) Proof of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such proof of insurance shall comply with subsections (B) and (C) directly above.
- (e) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee’s obligation to ensure that insurance fully consistent with the requirements of this Section is secured and maintained, nor does it waive Licensee’s liability for its failure to do so.
- (f) The Licensee shall provide the City with a copy of any policy of insurance required under this Section upon request by the Commissioner or the New York City Law Department.

#### **26.9 Miscellaneous**

- (a) The Licensee may satisfy its insurance obligations under this Section through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- (b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).
- (c) The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.
- (d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, the Licensee 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 the Licensee’s own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that “this notice is being given on behalf of the City of New York, together with its officials and employees, as Insured as well as the Named Insured.” Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New

**Commented [FD 46] :** From 2018 amendment

York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

- (e) The Licensee's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute 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.
- (f) Insurance coverage in the minimum amounts provided for in this Section shall not relieve the Licensee of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.
- (g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Section, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.
- (h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.
- (i) In the event the Licensee 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, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

### **INVESTIGATIONS**

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

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

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

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

(ii) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 27(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:

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

(iii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(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 Section 27(e)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in

Sections 27(e) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**28.6** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

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

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

**Commented [FD (47)] :** Update from 2018 amendment

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

**Commented [FD (48)] :** From 2018 amendment

**29.3** No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the

**Commented [FD (49)] :** From 2018 amendment

termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

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

Commented [FD (50)]: From 2018 amendment

#### **EMPLOYEES OF LICENSEE**

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

#### **INDEPENDENT STATUS OF LICENSEE**

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

#### **CONFLICT OF INTEREST**

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

### **PROCUREMENT OF AGREEMENT**

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

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

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

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

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

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

### **JUDICIAL INTERPRETATION**

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



### **MODIFICATION OF AGREEMENT**

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

### **COUNTERPARTS**

**38.1** This License Agreement may be executed in several counterparts, which shall constitute one and the same instrument.

**Commented [FD (51)]:** Adapted from proposed 2021 amendment

[Signature Page to Follow]

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

CITY OF NEW YORK  
PARKS & RECREATION

STATUE CRUISES, LLC

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

By: \_\_\_\_\_  
Mitch Randall  
Vice President

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

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            2021 before me personally came Alexander Han to me known, and known to be the Chief of Concessions of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in her official capacity and for the purpose mentioned therein.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this            day of            2021 before me personally came \_\_\_\_\_, who, being duly sworn by me did depose and say that he/she executed the foregoing instrument and acknowledged that he executed the same for the purposes mentioned therein.

\_\_\_\_\_  
Notary Public

## **EXHIBIT A**

### **SCHEDULE OF MINIMUM ANNUAL PAYMENTS**

**Commented [FD 52] :** The new text was adapted from the proposed 2021 amendment

#### **Operating Year 1**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/21	\$208,333.33	VS 10% OF GROSS
11/01/21	\$208,333.33	VS 10% OF GROSS
12/01/21	\$208,333.33	VS 10% OF GROSS
01/01/22	\$208,333.33	VS 10% OF GROSS
02/01/22	\$208,333.33	VS 10% OF GROSS
03/01/22	\$208,333.33	VS 10% OF GROSS
04/01/22	\$208,333.33	VS 10% OF GROSS
05/01/22	\$208,333.33	VS 10% OF GROSS
06/01/22	\$208,333.33	VS 10% OF GROSS
07/01/22	\$208,333.33	VS 10% OF GROSS
08/01/22	\$208,333.33	VS 10% OF GROSS
09/01/22	\$208,333.37	VS 10% OF GROSS
<b>Total:</b>	<b>\$2,500,000.00</b>	

#### **Operating Year 2**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/22	\$208,333.33	VS 10% OF GROSS
11/01/22	\$208,333.33	VS 10% OF GROSS
12/01/22	\$208,333.33	VS 10% OF GROSS
01/01/23	\$208,333.33	VS 10% OF GROSS
02/01/23	\$208,333.33	VS 10% OF GROSS
03/01/23	\$208,333.33	VS 10% OF GROSS
04/01/23	\$208,333.33	VS 10% OF GROSS
05/01/23	\$208,333.33	VS 10% OF GROSS
06/01/23	\$208,333.33	VS 10% OF GROSS
07/01/23	\$208,333.33	VS 10% OF GROSS
08/01/23	\$208,333.33	VS 10% OF GROSS
09/01/23	\$208,333.37	VS 10% OF GROSS
<b>Total:</b>	<b>\$2,500,000.00</b>	

#### **Operating Year 3**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/23	\$208,333.33	VS 10% OF GROSS
11/01/23	\$208,333.33	VS 10% OF GROSS
12/01/23	\$208,333.33	VS 10% OF GROSS
01/01/24	\$208,333.33	VS 10% OF GROSS
02/01/24	\$208,333.33	VS 10% OF GROSS
<b>Total:</b>	<b>\$1,041,666.65</b>	

**EXHIBIT B**

**SCHEDULE OF OPERATING HOURS**

Operating hours year round shall be as required by the National Park Service in connection with the Liberty and Ellis Island Ferry service, as required by regularly scheduled cruises, as requested by vessel charterers, or as required for other ferry services, subject to Parks's written approval.

**SCHEDULE OF APPROVED FEES**

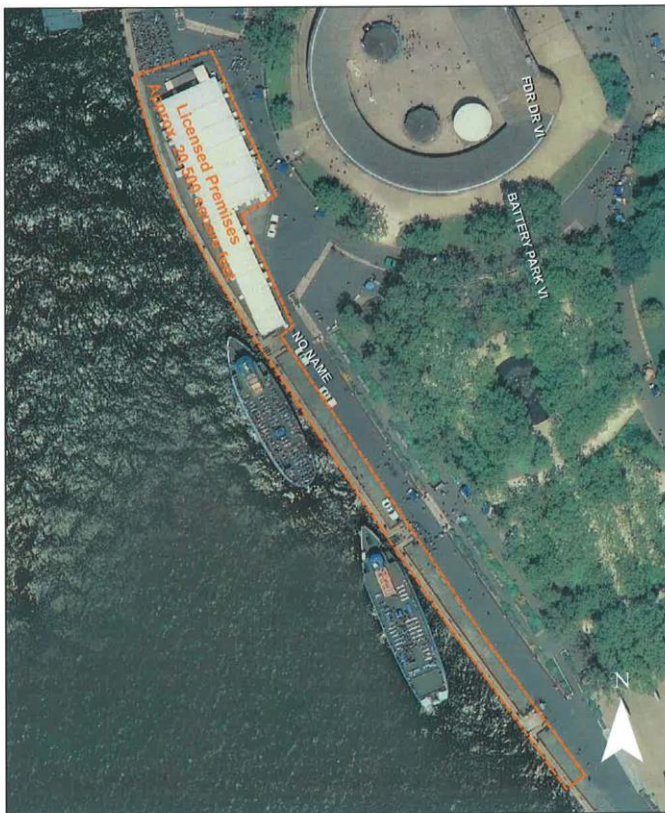
Adult - \$23.50  
Child - \$12.00  
Senior - \$18.00

**EXHIBIT C**

**SITE PLAN OF LICENSED PREMISES**

**License Agreement #M5-E-M**

Battery Park  
Manhattan, New York



City of New York Parks and Recreation

Michael R. Bloomberg, Mayor

Adrian Benepe, Commissioner

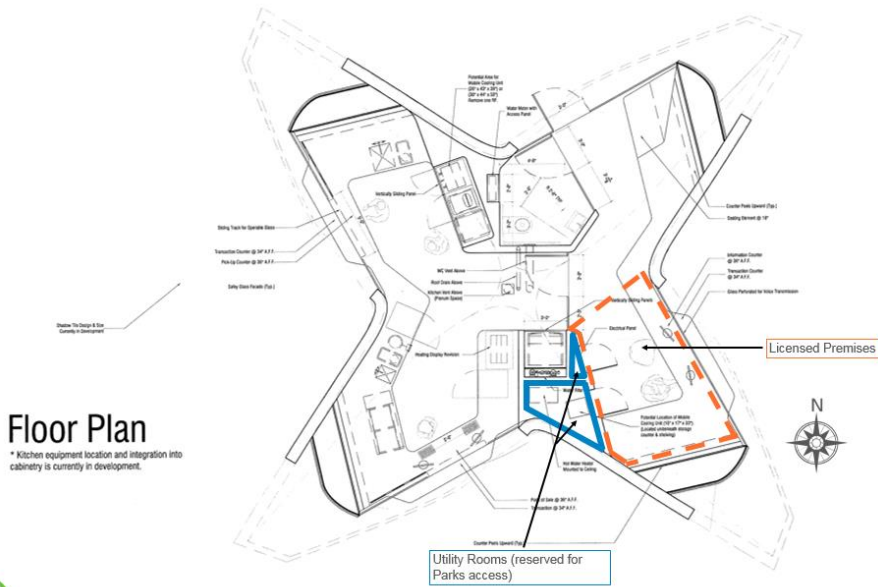
(c) 2009 City of New York Parks and Recreation. May not be reproduced without consent.  
This map has been prepared in whole or part using secondary data.  
Data accuracy is limited by the scale and accuracy of the original sources.  
Site-specific conditions should be field-verified.  
For legal accuracy refer to the maps that established parks and acquisition maps.

--- Limit Line

**EXHIBIT D**

## POTENTIAL TICKET KIOSK LICENSED PREMISES

**Commented [FD 53] :** Statue asked that the name of the exhibit be changed from “Statue Cruises Ticket Kiosk Licensed Premises” to “Potential Ticket Kiosk Licensed Premises” and Parks is fine with this.



### New Amsterdam Plein and Pavilion at Peter Minuit Plaza

**EXHIBIT E**

Commented [FD (54)]: From 2018 amendment

**PAID SICK LEAVE LAW CONCESSION AGREEMENT RIDER**

**Introduction and General Provisions**

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

---

<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.



### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSL ( “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 PSL 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 PSL. 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 PSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements,

using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

#### Exemptions and Exceptions

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

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

#### Retaliation Prohibited

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

#### Notice of Rights

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

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

#### Records

An employer must retain records documenting its compliance with the 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.

**EXHIBIT F**

Commented [FD (55)]: From 2018 amendment

**CERTIFICATES OF INSURANCE**

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

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

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

-- OR --

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

**CITY OF NEW YORK**

**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

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

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

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

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

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

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

State of .....)

) ss.:

County of .....)

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

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

LICENSE AGREEMENT

BETWEEN

**STATUE CRUISES, LLC**

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

*for*

FOR THE OPERATION AND MAINTENANCE OF A COMMERCIAL FERRY SERVICE  
TO THE STATUE OF LIBERTY NATIONAL MONUMENT AND ELLIS ISLAND FROM  
THE BATTERY,

MANHATTAN, NEW YORK

**M5-E-M**

DATED: \_\_\_\_\_, 2021

## **TABLE OF CONTENTS**

GRANT OF LICENSE .....	4
DEFINITIONS .....	5
TERM OF LICENSE.....	8
PAYMENT TO CITY .....	10
RIGHT TO AUDIT .....	15
ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS .....	15
UTILITIES .....	15
INFLAMMABLES.....	16
OPERATIONS .....	16
SECTION 10 INTENTIONALLY OMITTED .....	21
IMPROVEMENT AND/OR CORRECTION IN OPERATIONS .....	21
MAINTENANCE, SANITATION, AND REPAIRS .....	22
EQUIPMENT .....	24
EXPENDABLE OR PERSONAL EQUIPMENT .....	24
EQUIPMENT AND CONDITION UPON SURRENDER .....	25
BONDS, CAPTIAL PROJECTS, SUSPENSION & SECURITY .....	25
RESERVATION FOR PARKS SPECIAL EVENTS.....	26
PROHIBITION AGAINST TRANSFER .....	27
ASSIGNMENTS AND SUBLICENSES .....	27
ALTERATIONS.....	28
COMPLIANCE WITH LAWS.....	28
NON-DISCRIMINATION .....	28
NO WAIVER OF RIGHTS .....	29
INDEMNIFICATION .....	29
WAIVER OF COMPENSATION .....	30
WORKERS' COMPENSATION AND INSURANCE .....	30

INVESTIGATIONS .....	35
CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE.....	37
WAIVER OF TRIAL BY JURY .....	38
EMPLOYEES OF LICENSEE.....	39
INDEPENDENT STATUS OF LICENSEE.....	39
CONFLICT OF INTEREST .....	39
PROCUREMENT OF AGREEMENT.....	39
ALL LEGAL PROVISIONS DEEMED INCLUDED .....	40
SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS .....	40
JUDICIAL INTERPRETATION .....	40
MODIFICATION OF AGREEMENT .....	40
EXHIBIT A .....	44
EXHIBIT B .....	45
EXHIBIT C .....	46
EXHIBIT D .....	47
EXHIBIT E.....	48
EXHIBIT F.....	52



**LICENSE AGREEMENT** (“License” or “License Agreement”) made this \_\_\_\_ day of \_\_\_\_\_, 2021, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10021, and Statue Cruises, LLC (“Licensee”), a limited liability company organized under the laws of the State of Delaware, whose address is 1 Audrey Zapp Drive, Jersey City, NJ, 07303.

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

**WHEREAS**, The Battery in the Borough of Manhattan is property under the jurisdiction and control of Parks; and

**WHEREAS**, Licensee desires to operate passenger vessels including commercial ferry service for the transportation of passengers between The Battery and Liberty and Ellis Islands pursuant to authorizations from appropriate Federal, State and City agencies, in accordance with Licensee’s contract with the National Park Service (“NPS”) which may be amended from time to time (“NPS Agreement”) and the terms set forth herein; and

**WHEREAS**, in connection therewith, the Commissioner desires to provide for the operation and maintenance of three (3) landing facilities and adjacent walkways in The Battery, Manhattan for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governor’s Island and day and night charters of vessels owned, operated or chartered by Licensee for the accommodation and convenience of and use by the public and Licensee wishes to provide same; and

**WHEREAS**, Parks complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) Rules for the selection of concessionaires and has received authorization to enter into a sole source concession agreement with Licensee; and

**WHEREAS**, Parks and Licensee desire to enter into a License Agreement specifying rights and obligations with respect to the operation and maintenance of the Licensed Premises as defined in Section 2.1(j).

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

### **GRANT OF LICENSE**

**1.1** Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more particularly described in Section 2.1(j) herein, for the purpose of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry

service to Governor's Island, and day and night charters of vessels, owned, operated or chartered by Licensee, for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License. Parks and the Commissioner shall cooperate with Licensee in all reasonable aspects in obtaining such approvals, permits and licenses, including but not limited to executing or authorizing applications for same as may be necessary to permit Licensee to obtain such approvals, permits, or licenses. Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or Commissioner's duly authorized representative, or the relevant City official if the required approval is the City's. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or Commissioner's duly authorized representative.

**1.3** It is expressly understood that no land, building, space, improvement, or equipment is leased to Licensee, and that Licensee shall not acquire any property interest in the Licensed Premises whatsoever but that during the Term of this License, Licensee shall have the use of the Licensed Premises in order to carry out the purposes herein provided. Except as herein provided, Licensee has the right to occupy and operate the Licensed Premises so long as this License is not terminated by the Commissioner in accordance with the terms hereof.

**1.4** Licensee shall provide, at all times, free access to the Licensed Premises to the Commissioner or Commissioner's representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes. Parks shall provide reasonable prior notice to Licensee of any inspection outside of normal operating hours, unless the inspection is in response to an emergency condition.

## **DEFINITIONS**

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

(a) "City" shall mean the City of New York, its departments and political subdivisions.

(b) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or Commissioner's designee.

(c) "Comptroller" shall mean the Comptroller of the City of New York.

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

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

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

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

(f) “Parks” shall mean the New York City Department of Parks & Recreation.

(g) “Substantial Completion” or “Substantially Complete” shall mean that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed, and that the improvement may be utilized by the public.

(h) “Final Completion” or “Finally Complete” shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in a writing that it has been finally completed and no further work is required by Licensee pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year. Operating Year 1 shall refer to the period between October 1, 2021 to September 30, 2022. Operating Year 2 shall refer to the period between October 1, 2022 to September 30, 2023. Operating Year 3 shall refer to period between October 1, 2023 to February 29, 2024.

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, three (3) landing slips as authorized in writing by Parks, currently numbered 3, 4, and 5, and adjacent walkways located in The Battery, Manhattan and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping, and upon amendment of the license agreement between Parks and The Battery Conservancy (“TBC”) for the operation and maintenance of a food and beverage concession in the New Amsterdam Plein & Pavilion (“Pavilion”), in the Battery, Manhattan, and with Parks’ written approval, and with agreement by Licensee as per Section 9.30, the information wing(s) of the Pavilion as denoted in Exhibit D attached hereto. Parks may authorize Licensee to utilize a different landing slip from slip(s) currently authorized, subject to availability, provided however that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

(k) “Capital Improvements” shall mean all construction, reconstruction or renovation

of the Licensed Premises, including architectural, engineering, and design fees and permitting costs necessary to implement such construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include the installation of all "Fixed Equipment," as that term is defined in this Section, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repairs required to be performed in the normal course of management and operation of the Licensed Premises. Licensee must secure written permission from Parks to perform any Capital Improvement on the Licensed Premises.

(I) (i) "Gross Receipts" shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks Merchandise as defined below) or services of any kind at The Battery, provided that Gross Receipts 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 Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered from Licensed Premises may be made at a location other than at the Licensed Premises.

(ii) Gross Receipts shall include receipts by Licensee from all sponsorships at the Licensed Premises, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 19 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however, that any gratuities transmitted by Licensee directly or indirectly to employees shall not be included within Gross Receipts. Licensee shall provide documentation satisfactory to Parks to prove that such gratuities were paid to employees in addition to their regular salaries.

(v) Gross Receipts shall include all funds received for services rendered by the Licensee plus any deposits made in relation to said services.

(m) “Special Events” shall mean any private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Commissioner for Commissioner’s prior approval plans for any such Special Events at the Licensed Premises which will result in the closing of the entirety of the Licensed Premises to the public during regular hours of operation.

(n) “Parks Merchandise” shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks’ discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

### **TERM OF LICENSE**

**3.1** This License shall become effective upon Parks giving written notice to proceed to Licensee, following registration with the Comptroller. This License shall commence on the date listed on the notice to proceed (“Commencement Date”) and shall terminate upon the earliest occurrence of one of the following:

- (a) February 29, 2024;
- (b) termination by Licensee of this License upon an NPS directive;
- (c) termination of Licensee’s NPS Agreement (“Termination Date”).

The period of time from the Commencement Date to the Termination Date, shall be the License term (“Term”). In no event shall the Concession become effective prior to registration with the Comptroller.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner in the Commissioner’s sole discretion, at any time, however, such termination shall not be arbitrary and capricious. Such termination shall be effective twenty-five (25) days after written notice is sent to Licensee. In the event of such early termination, Licensee shall continue to make payments as set forth in Section 4 herein, up to and including but not beyond said early termination date. Upon early termination, Parks shall submit a final bill to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein. In the event such notice is not given, this License shall terminate as described in Section 3.1 of this agreement.

**3.3 (a)** Should Licensee breach or fail to comply with any of the provisions of this License, any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice within thirty (30) days from the mailing thereof, or such longer period required to cure such breach if Licensee has expeditiously commenced curing such breach and is diligently prosecuting such cure to

completion, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate upon the written notice of Commissioner to Licensee advising that the License is terminated. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows within one (1) year of the initial breach, other than nonmaterial breaches or omissions, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

**(b)** The following shall constitute events of default for which this License may be terminated on one (1) day notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

**(c)** Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to limit the Commissioner's right to terminate this License pursuant to Section 3.2 hereof.

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

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

**3.6** Licensee shall, on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License, is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to remove all possessions from the Licensed Premises on or before the expiration or termination date.

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

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

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

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date or in the event of earlier termination, to the effective date of termination; and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relet the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relet any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such reletting, and no such failure to relet or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

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

**3.10** Should NPS require Licensee to terminate this License in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to Licensee, Parks agrees not to pursue any claims for lost revenues related to such early termination of said License.

### **PAYMENT TO CITY**

**4.1** (a) Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of gross receipts derived from the operation of the Licensed Premises:

<b>Operating Year</b>	<b>Minimum Annual Fee</b>	<b>Percentage of Gross Receipts</b>
Operating Year 1: October 1, 2021 to September 30, 2022	\$2,500,000.00	10%
Operating Year 2: October 1, 2022 to September 30, 2023	\$2,500,000.00	10%
Operating Year 3: October 1, 2023 to February 29, 2024	\$1,041,666.65	10%

**(b)** In the event of the suspension of Licensee's ferry service for a period of time (which time shall be determined by Parks based on all the relevant circumstances) due to circumstances beyond the control of Licensee, including, without limitation, acts of God, war, or enemies, or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty, the minimum annual fee shall be reduced on a pro rata basis.

**4.2** The minimum annual fee for each Operating Year shall be paid to the City in equal monthly installments on the first (1<sup>st</sup>) day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments attached as Exhibit A. If at any time Licensee's annual percentage fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the twentieth (20<sup>th</sup>) day of each succeeding month in such Operating Year.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or the Commissioner's right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the



maximum rate permitted under such law or regulation.

**4.4** (a) Upon affixing its signature to this License, Licensee shall deposit with the City the amount of two hundred and fifty thousand dollars and no cents (\$250,000.00) payable to the City of New York, as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

(b) Security Deposit shall consist of cash, a certified check payable to the City of New York, an irrevocable letter of credit naming the City of New York as beneficiary, an interest-bearing bond or other negotiable interest-bearing instrument payable to the City of New York which the Comptroller shall approve as being of equal market value with the sum so required. The Security Deposit shall be held by the City without liability for interest thereon, as security for the full and faithful performance by the Licensee of each and every term and condition of this license on the part of the Licensee to be observed and performed. The Licensee shall collect or receive annually any interest or income earned on such interest-bearing bond or other negotiable interest-bearing instrument less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after five(5) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

**4.5** (a) On or before the thirtieth (30th) day following each month of each Operating Year, Licensee shall submit to Parks, in a form reasonably satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. Licensee shall also submit a summary report of Gross Receipts for each Operating Year within sixty (60) days of the end of each Operating Year of this License. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the categories including, without limitation, the following categories:

NPS Statue of Liberty Ferry    Gross Receipts from rates and charges for tickets for ferry service

Service	between the Licensed Premises and Liberty Island and Ellis Island; and
NPS Island Cruise Service	Gross Receipts from rates and charges for tickets for NPS sightseeing cruises that begin and/or terminate at the Licensed Premises; and
Other Ferry Operations	Gross Receipts from rates and charges for tickets for all other ferry operations that begin and/or terminate at the Licensed Premises; and
Miscellaneous	All other Gross Receipts generated at and realized from Licensee's operation of the Licensed Premises.

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

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state, and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from gross receipts or from the compensation due under this License.

**4.6** On or before the thirtieth (30th) day following each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee. Parks shall keep such statement confidential except as required by law or by a court of competent jurisdiction.

**4.7** (a) Licensee, during the Term of this License, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee, records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be acceptable to Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the record-keeping procedures of the Licensee prior to the commencement of the term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of six (6) years.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of

the Licensee to maintain adequate internal controls or to keep any of the records as required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one (1) month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License in accordance with and subject to the terms of Section 3.3(a) provided that Licensee shall have the opportunity to contest such claimed discrepancy and shall not be deemed in default unless and until such discrepancy is confirmed through such contest, and provided further that an inadvertent error on the part of Licensee shall not be deemed a default if Licensee promptly pays to Parks any additional monies, payments, fees, or charges due. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. Licensee shall pay any assessment based upon such reasonable projections within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a material default hereunder.

**4.8** In the event Parks determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.5 through 4.7 hereinabove Licensee may be subject to a charge of \$500.00 with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has willfully failed to cure within thirty (30) days of such notice.

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

City of New York Department of Parks & Recreation Revenue Division  
The Arsenal - Room 407  
830 Fifth Avenue  
New York, NY 10021

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

**4.11** At Parks' request and upon (1) execution of a new agreement with TBC (the "New TBC Agreement") providing that TBC may receive a portion of the license fee payments from this License Agreement and (2) subject to any additional City approvals which may be necessary, including FCRC approval and registration of the New TBC Agreement, Licensee shall be required to pay portions of the license fee payments to TBC, which funds shall be used by TBC for the operation and maintenance of the area in and around the Pavilion and provide additional maintenance support to The Battery as shall be set forth in more detail in the New TBC Agreement.

## **RIGHT TO AUDIT**

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

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

**5.3** Notwithstanding anything in this License Agreement, 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.

## **ORDER OF APPLICATION OF PAYMENT, CREDITOR-DEBTOR PROCEEDINGS**

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

## **UTILITIES**

**7.1** Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises, including all Department of Environmental Protection ("DEP") water and sewer charges. Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain, all utility lines, meters and supplies of power necessary for the proper operation of this license and pay all utility costs. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges (collectively, "Facilities"). Licensee shall not

undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities having jurisdiction over the construction and operation of the Licensed Premises. Parks shall cooperate as may be necessary to facilitate Licensee obtaining necessary permits and approvals for such utility lines and for connecting any new services to existing utility lines, whether within or without the Licensed Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. Licensee shall remove any unsuitable existing materials, as required.

**7.2** Licensee shall be responsible for payment of all utility costs incurred at the Licensed Premises during the Term of this License, however Licensee shall have the right to provide separate metering for its sublicensees and upon notice to the City of such separate metering City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs.

**7.3** Licensee, at its sole cost and expense, shall maintain and repair as needed all utility systems and connections, including but not limited to underground utility lines from the street to the Licensed Premises.

## **INFLAMMABLES**

**8.1** Except for properly stored gasoline, and other substances approved by the United States Coast Guard ("USCG") in the operation of passenger vessels, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

## **OPERATIONS**

**9.1** Licensee, at its sole cost and expense, shall operate this License for the daily accommodation of NPS, Parks and the public, on a year-round basis and at such times of day as the Commissioner shall reasonably prescribe and as required by the NPS Agreement and as otherwise permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in their "as-is" condition and agrees to use its best efforts to obtain necessary permits and approvals related to all operations at the Licensed Premises. Parks agrees to use its reasonable efforts to assist Licensee by directing Licensee to appropriate governmental agencies having jurisdiction and by taking such other actions and cooperating with Licensee to obtain such approvals as may be reasonably necessary. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks. Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and Licensee shall perform the following services at the Licensed Premises:

(a) operate and manage the landing facilities and adjacent walkways for embarking and discharging passengers related to Licensee's ferry and passenger vessel operations, including but not limited to the NPS Statue of Liberty Concession, the NPS Island Cruise Service, sightseeing cruises, day and night charters of vessels and other ferry operations;

(b) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair in accordance with Section 12 herein.

**9.2** Licensee shall provide an adequate number of staff members possessing the requisite qualifications to conduct all its operations at the Licensed Premises seven (7) days a week for such hours as the Commissioner shall reasonably approve. Licensee's employees at the Licensed Premises shall be qualified for their respective functions and shall be made to wear appropriate uniforms, subject to approval of the Commissioner. Annexed hereto and made a part hereof as Exhibit B is the Schedule of Approved Hours and Fees, including the schedule of sailings for Operating Year 1. Licensee shall notify Commissioner promptly of any permanent changes to its scheduled operations as may be required by NPS. All operational plans, including delivery schedules, rubbish removal schedules, and hours of operation are subject to Parks' approval. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

Parks is a governmental agency which has responsibilities to the public to make efforts to insure that operations on premises owned or controlled by it are conducted in a manner which is consistent with fair treatment to the consuming public, including pricing which reflects regularly available competitive market prices at nearby locations, subject to reasonable adjustments for variations in costs and market factors. Parks acknowledges that Licensee is a concessioner of NPS under the terms of a concession contract with NPS ("NPS Agreement") and that as part of that concession relationship, NPS may require modification of schedules and prices, require Licensee to follow recommendations and give reasons why recommendations should be followed, but that the prices ultimately posted by Licensee are subject to NPS approval. Parks acknowledges and accepts the rates, schedule, and formula for ferry rate increases outlined in Exhibit B. In the event that the Licensee requests a ferry rate change beyond the CPI, NPS and Parks must mutually agree to any change beyond CPI. NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

**9.3** (a) Licensee shall notify the Commissioner within five (5) business days whenever Licensee tentatively schedules any private use of the Licensed Premises (e.g., private parties) which would close the entire Licensed Premises to the general public. In no event shall Licensee close the entire Licensed Premises to conduct private activities during public hours. In addition, Parks may make use of the Licensed Premises, as provided in Section 17 herein.

(b) In the event of extreme weather conditions including heavy snowfall, hurricanes, or floods, which prohibit the use of the whole or a substantial part of the Licensed Premises for the purposes as provided in this License, Licensee may close the Licensed Premises. In the event of such a closing as provided in this Section 9.3(b), Licensee shall notify the Commissioner within at least twelve (12) hours of closing the Licensed Premises.

**9.4** Licensee shall, at its sole cost and expense, obtain all licenses and permits that may be

required to operate the Licensed Premises in accordance with applicable rules, laws and regulations. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any Certificates of Occupancy and Permits of Assembly, as issued.

**9.5** Licensee shall submit to Commissioner for Commissioner's approval, not less than sixty (60) days before the first day of each Operating Year, the approved NPS schedules for the coming Operating Year concerning operating days and hours for the services and products to be provided under this License during the forthcoming Operating Year. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days, hours, fees and rates. Notwithstanding the above, NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks. Parks acknowledges and accepts the schedule outlined in Exhibit B. In the event that the Licensee requests a schedule change, NPS and Parks must mutually agree to any change. NPS, Parks and Licensee agree to cooperate to promptly resolve any conflict between NPS requirements and Parks.

**9.6** Licensee shall record all transactions involved in the operation of this License on cash registers and keep books and records as required by Section 4.7 of this License Agreement.

**9.7** Licensee warrants that all services provided, merchandise sold and vending operations provided pursuant to this License shall be of high grade and good quality.

**9.8** Licensee shall not use or permit the use of any polystyrene foam products in connection with services or merchandise offered under this License.

**9.9** An officer of the Licensee shall personally operate this License or employ an operations manager(s) ("Manager(s)") possessing appropriate qualifications to manage operations at the Licensed Premises in a manner that is satisfactory to the Commissioner in Commissioner's reasonable discretion. The Manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sub-licensee whenever reasonably demanded by Commissioner, provided that the Commissioner shall not act arbitrarily or capriciously in making such demand.

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

**9.11** Licensee shall, at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

(a) collect and safeguard all monies generated under this License;

(b) maintain the Licensed Premises;

(c) conduct and supervise all activities to be engaged in at the Licensed Premises including but not limited to the provision of qualified food and guest service personnel and cashier(s); and

(d) securing the Licensed Premises.

**9.12** Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary or desirable for its operations under this License. Licensee shall operate and play such sound equipment and music in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq. thereof, and only at a sound level acceptable to the Commissioner. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as required by law for such music or music programming in connection with its operation of the Licensed Premises.

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

**9.14** Licensee shall provide access to the Licensed Premises to disabled members of the public. This accessibility shall be clearly indicated by signs and included in advertising by Licensee when practicable. Licensee shall include in its advertising and promotion program, provided for in Section 9.22 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall be in compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

**9.15** Licensee shall, at its sole cost and expense, install a CCTV monitoring system at the Licensed Premises on a twenty-four (24) hour per day basis. Such CCTV monitoring system shall be subject to the approval of Parks, the New York City Police Department (“NYPD”), and any other relevant agencies.

**9.16** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring at the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft, which may be asserted against Licensee with respect to the Licensed Premises of which Licensee becomes aware. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage (including all insured claims for loss or damage) pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person’s name and address.

**9.17** Licensee shall promptly notify Parks’ personnel of any unusual conditions at the Licensed Premises that may develop in the course of the operation of this License of which Licensee becomes aware such as, but not limited to, fire, flood, casualty and substantial damage of any character.

**9.18** Licensee shall comply with all DEP directives during City drought restrictions.



**9.19** Intentionally omitted.

**9.20** Licensee shall maintain close liaison with Parks' Enforcement Patrol, NYPD, and other police officials, and cooperate with all efforts to remove illegal vendors from the Licensed Premises and adjacent areas. Licensee shall report illegal activity on the Licensed Premises to Parks, NYPD, or other police officials immediately upon Licensee becoming aware of such activity.

**9.21** The Commissioner shall have the right to reasonably approve the days and times on which deliveries to Licensee may be made.

**9.22** (a) Licensee may establish an advertising and promotion program, however Licensee shall not place any advertisements on the exterior of the Licensed Premises or on any building. Licensee shall have the right to print or to arrange for the printing of programs for events containing any advertising matter except advertising matter which, in the Commissioner's sole discretion, is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals or conduct. Licensee may release news items to the media as it sees fit. If the Commissioner in Commissioner's reasonable discretion, however, finds any releases to be unacceptable, then Licensee shall cease or alter such releases as directed.

(b) Licensee may, subject to the prior reasonable approval of the Commissioner as to design and distribution, such approval not to be unreasonably withheld, print or arrange for the printing of advertising, signs, programs or brochures containing advertising matter, except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks or the City of New York. Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the prior written approval of the Commissioner.

(c) Parks reserves the right to place advertising at the Licensed Premises, at any time during the Term of this License, at locations which do not interfere with operations at the Licensed Premises determined through consultation with the Licensee.

(d) Under no circumstances shall Licensee be permitted to place advertisements on the Licensed Premises. Licensee shall not advertise any product brands on the Licensed Premises without Parks' prior approval.

**9.23** (a) Licensee shall display at the Licensed Premises, in an appropriate manner, all permits and licenses required to operate the Licensed Premises..

(b) Any sign posted by Licensee on the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the prior written approval of the Commissioner, shall be appropriately located, and shall state that the Licensed Premises is a New York City municipal concession operated by Licensee. In addition, Licensee may display signage for the purpose of advertising upcoming events at the Licensed Premises, the design, location, size and type of which shall be aesthetically appropriate and subject to the reasonable approval of Parks and where appropriate, the NYC Art Commission.

**9.24** Licensee shall at its sole cost and expense post throughout the Licensed Premises such signs as Licensee determines are necessary to direct patrons to its services and facilities. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby

highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, as well as any other signs which Licensee desires to place or permit to be placed on the Licensed Premises, are subject to Commissioner's reasonable prior approval.

**9.25** The sale or advertising of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is strictly prohibited. In addition, the use of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is prohibited. Licensee will be required to adhere to and enforce this policy.

**9.26** The sale of beverages from glass bottles at the Licensed Premises is strictly prohibited. All beverages shall be decanted into non-glass, shatter-proof containers before being served.

**9.27** Intentionally omitted.

**9.28** Licensee shall arrange for regular pest control inspections and exterminations at the Licensed Premises. To the extent that the Licensee applies pesticides to any property owned or leased by the City, Licensee or any subcontractor hired by Licensee shall comply with Chapter 12 of the New York City Administrative Code.

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

**9.30** Contingent upon Parks' prior written approval, Licensee may operate a visitor information, ticket, and merchandise booth in the information wing(s) of the New Amsterdam Plein & Pavilion in Peter Minuit Plaza as denoted in Exhibit D.

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

## **SECTION 10 INTENTIONALLY OMITTED**

### **IMPROVEMENT AND/OR CORRECTION IN OPERATIONS**

**11.1** Should the Commissioner reasonably decide that Licensee is not operating the Licensed Premises in a manner consistent with a typical public landing and docking facility in the same segment of the market, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. Licensee's failure to comply with such written notice or to respond in a manner satisfactory to Commissioner within thirty (30) days from the mailing of said notice shall be deemed a default under this License, and Commissioner may terminate this License in accordance with Section 3.3(a) hereof.

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

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

**12.1** Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, put, keep, repair, preserve, and maintain in good order the Licensed Premises, including all batter piles, mooring bits, wales, chocks, paths, walkways, and signage so as to maintain the Licensed Premises in a manner customary for landing and docking facilities in the same industry. Licensee shall at all times keep the Licensed Premises clean, litter free, neat and, with respect to any food service operations, fumigated, disinfected, deodorized and in every respect sanitary. Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the perimeter of the Licensed Premises), and collect and remove all litter, debris, snow and garbage therefrom. Licensee shall provide for the regular cleaning and maintenance of the perimeter of the Licensed Premises including but not limited to the timely removal of all litter and debris, snow and garbage, perimeter sidewalk and perimeter fence maintenance and repair. Licensee shall repair and maintain in good working order any and all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment.

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

**12.3** No later than thirty (30) days before the end of each Operating Year, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and all Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee during the forthcoming Operating Year in order to comply with the terms of this License.

**12.4** (a) Licensee shall provide adequate waste receptacles at the Licensed Premises. All waste, garbage, refuse, rubbish and litter which collects upon the Licensed Premises without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises at a frequency satisfactory to the Commissioner, all at the Licensee's sole

cost and expense. In performing its duties under this section, Licensee shall comply with all applicable ordinances and programs of the City, state, and federal governments.

(b) Licensee will provide separate receptacles for recyclable items, and shall conform to all New York City, New York State and federal recycling laws as the same may exist from time-to-time.

**12.5** At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted. The condition of the Licensed Premises at the Commencement Date shall be considered acceptable.

**12.6** At its sole cost and expense, Licensee shall remove any and all graffiti which may appear at the Licensed Premises. Such graffiti removal shall be commenced within twenty-four (24) hours from the time Licensee becomes aware of the graffiti and shall continue until such graffiti is removed.

**12.7** Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License, without the express written permission of Parks.

**12.8** At its sole cost and expense, Licensee shall maintain the three landing slips available to them as assigned by Parks (Slips 3, 4, and 5), and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of all litter, debris, and garbage.

**12.9** Intentionally omitted.

**12.10** Intentionally omitted.

**12.11** Intentionally omitted.

**12.12** Licensee shall provide adequate staff in order to maintain the Licensed Premises in a manner consistent with a typical public landing and docking facilities operating in the same segment of the market.

**12.13** Licensee shall be responsible for regular pest control inspections and extermination. To the extent Licensee applies pesticides to any property owned or leased by the City, Licensee or any subcontractor hired by Licensee, shall comply with Chapter 12 of the New York City Administrative Code.

**12.14** In the event the Commissioner requires or directs Licensee to undertake any routine maintenance or repair in order to operate and maintain the Licensed Premises in accordance with Article 11 and Article 12 of this License Agreement, Licensee shall promptly, and in any event within forty-eight (48) hours from the time of written notification by the Commissioner (provided that such maintenance or repair is capable of being completed in such time period) undertake and complete such maintenance or repair. In the event such maintenance or repair may not be completed within such time period, Licensee shall diligently prosecute to completion such

maintenance or repairs, subject to unavoidable delays beyond reasonable control of Licensee. Any extension of time for the completion of such maintenance or repair shall be granted at the reasonable discretion of Commissioner. If Licensee fails to complete such routine maintenance or repair within such time period, Licensee shall pay liquidated damages of two hundred fifty dollars (\$250.00) for each day such routine maintenance or repair is not completed.

### **EQUIPMENT**

**13.1** Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, provide, and replace if necessary, all equipment necessary for the operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

**13.2** Commissioner represents that City has title to all Fixed Equipment. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.

**13.3** Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not exercise such option it shall be the responsibility of Licensee to remove such items at its sole cost and expense after the expiration or sooner termination of this License.

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

### **EXPENDABLE OR PERSONAL EQUIPMENT**

**14.1** Licensee shall supply at its own cost and expense all Expendable or Personal Equipment required for the proper operation of this License, and replace same at its own cost and expense when requested by Commissioner.

**14.2** Intentionally omitted.

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

**14.4** The Equipment to be removed by Licensee pursuant to Section 14.3 above, shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall

remain liable to City for any damage it may have caused to the Licensed Premises.

### **EQUIPMENT AND CONDITION UPON SURRENDER**

**15.1** Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, shall put, keep, landscape, repair, and preserve in good order Licensed Premises, which shall include sidewalks, and Fixed and Additional Fixed Equipment.

**15.2** Notwithstanding the foregoing, at the expiration or sooner termination of this License, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment to which City holds title, in at least as good a condition as said Licensed Premises, and the Fixed and Additional Fixed Equipment were found by Licensee, reasonable wear and tear excepted.

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

### **BONDS, CAPITAL PROJECTS, SUSPENSION & SECURITY**

**16.1** To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project, excluding routine maintenance and repairs required to be performed as per Section 12.1, with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other capital undertaking shall be in a form acceptable to Parks. For purposes of this provision a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

**16.2** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term of this License. The U.S. Army Corps of Engineers ("Army Corps"), or other federal or state entity, may also perform work which requires closure of portions of The Battery, including the Licensed Premises. Licensee agrees to cooperate with Parks to accommodate any such work by a City, Army Corps, state, or federal entity and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one (1) week notice of any such work. Parks may temporarily close a part or all of the Licensed Premises to facilitate the completion of a City, Army Corps, state or federal project, as determined by the Commissioner. In the event that Licensee must close the Licensed Premises because of such Parks, Army Corps, state, or federal work, then Licensee may propose and submit for the

Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event of full or partial closure of the Licensed Premises or suspension of Licensee's operations at the Licensed Premises, as provided for herein.

**16.3** This License may be suspended in full or in part for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

**16.4** Licensee acknowledges that the City has planned multiple capital construction projects ("Capital Projects") in the vicinity of the Licensed Premises during the Term, including, but not limited to, the renovation of existing slips, north of the Licensed Premises and the reconstruction of the entire length of the pedestrian promenade/wharf south and west of the Licensed Premises, which includes a portion of the Licensed Premises, which will impact the operation of the concession. Subject to Section 16.2 above, Licensee assumes the risk and sole cost and expense of conducting business at the Licensed Premises during any Capital Project.

**16.5** Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

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

**17.1** For the purposes of this Section 17.1 only, the term "Special Event(s)" shall mean any event for which Parks has issued a Special Event Permit at the Licensed Premises. Licensee acknowledges that Parks may arrange for Special Events at the Licensed Premises. Parks agrees to notify Licensee at least thirty (30) days in advance of any such Special Event. Licensee and Parks agree to work cooperatively and in good faith in scheduling Special Events. Any Special Event shall be coordinated with the operations of Licensee. It is expressly understood that this Section 17.1 shall in no way limit Parks' right to itself sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Special Event. Commissioner represents to Licensee that Commissioner has not granted to any other person or entity any license, permit, or right of possession or use which would prevent Licensee in any way from performing its obligations and realizing its rights under this License.

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

## **PROHIBITION AGAINST TRANSFER**

**18.1** Subject to Sections 19.3 and 19.4 below, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License hereby granted, a majority of the shares of Licensee, or any equipment owned by City as provided herein, or any interest therein, or consent, allow or permit any other person or party to license any part of the Licensed Premises, building, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless reasonably approved in advance in writing by Commissioner., it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

## **ASSIGNMENTS AND SUBLICENSES**

**19.1** Licensee may assign or sublicense its interest in whole or in part in this License provided that Licensee obtains the Commissioner's prior written approval, as follows:

**19.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than forty-nine percent of stock or voting control of Licensee in the Licensed Premises without the reasonable prior written consent of Commissioner. In connection with such a request, Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth reasonably acceptable to the Commissioner together with a certification that it shall provide management control reasonably acceptable to the Commissioner for the management and operation of the Licensed Premises.

**19.3** As used in this Section 19 the term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge of this License, mortgage of this License, transfer of or change in more than 49% in stock or voting control of the Licensee, including any transfer by operation of law. No sale or transfer of the stock owned by Licensee or its nominee may be made under any circumstance if such sale will result in a change of control violative of the intent of this Section.

**19.4** Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided above. The Commissioner may request any additional information Commissioner deems necessary and Licensee shall promptly comply with such requests.

**19.5** No consent to or approval of any assignment or sublicense granted pursuant to this Section 19 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.



## **ALTERATIONS**

- 20.1 (a)** “Alteration” shall mean (excepting ordinary repair and maintenance):
- (i)** any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or
  - (ii)** any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Licensed Premises.
- (b)** Licensee may alter Licensed Premises only with the written approval of Parks. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.
- (c)** In order to alter Licensed Premises pursuant to subsection (b) of this Section, Licensee must:
- (i)** Obtain Commissioner’s written approval (which shall not be unreasonably withheld or delayed) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings that may pertain to contemplated purchases and/or work;
  - (ii)** insure that work performed and alterations made on Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time; and
  - (iii)** notify Commissioner of completion of, and the making final payment for, any alteration within ten days after the occurrence of said completion or final payment.
- (d)** Commissioner may, in Commissioner’s discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City’s expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee’s obligations herein or operations hereunder in any respect.

## **COMPLIANCE WITH LAWS**

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

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

## **NON-DISCRIMINATION**

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

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

### **NO WAIVER OF RIGHTS**

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

### **INDEMNIFICATION**

#### **24.1 Licensee Responsibility.**

- (a) The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors, sublicensees, or subcontractors.
- (b) The Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss, or injury resulting from any and all of Licensee's operations under this License.
- (c) As between the City and the Licensee, the Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person. Notwithstanding the foregoing, Licensee shall not be responsible for injuries or damages to the extent due to the negligence or intentional misconduct of the City or its officials and employees.
- (d) The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is

now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

#### **24.2 Indemnification and Related Obligations**

- (a) To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not the Licensee itself has been negligent) and/or the Licensee's failure to comply with the law or any of the requirements of this License (collectively, "Losses"). Notwithstanding the foregoing, Licensee shall not be responsible for Losses to the extent due to the negligence or intentional tortious act or omission of the City or its officials and employees. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.
- (b) The Licensee's obligation to defend, indemnify and hold the City and its officials and employees harmless shall not be (i) limited in any way by the Licensee's obligations to obtain and maintain insurance under this License, nor (ii) adversely affected by any failure on the part of the City or its officials and employees to avail themselves of the benefits of such insurance.

### **WAIVER OF COMPENSATION**

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

### **WORKERS' COMPENSATION AND INSURANCE**

#### **26.1 Licensee's Obligation to Insure**

- (a) From the date this License Agreement is executed through the date of expiration or termination of the Agreement, the Licensee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein.
- (b) The Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

## **26.2 Commercial General Liability Insurance, Protection & Indemnity Insurance, and Pollution Insurance**

- (a) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”
- (b) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26.
- (c) If the Licensee maintains Marine Protection & Indemnity Insurance or Vessel Pollution Insurance or both, such policies of insurance shall list the City, including its officials and employees, as additional insured. Such coverage, if maintained, shall be in an amount that is commercially reasonable.

## **26.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance**

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

## **26.4 Commercial Automobile Liability Insurance**

With regard to all operations under this License, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

## **26.5 Property Insurance**

- (a) At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its

operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an additional insured and loss payee as its interests may appear. Licensee's replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.

- (b) In the event of any loss to any of the Concession Structures, the Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, the Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

## **26.6 Flood Insurance**

- (a) At the direction of the Commissioner, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. As of October 1, 2021, Licensee has no building that would require such flood insurance. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.
- (b) In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as a loss payee under all such policies.

## **26.7 General Requirements for Insurance Coverage and Policies**

- (a) Policies of insurance required under this Section 26 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII", a Standard & Poor's rating of at least A, a Moody's Investors Service rating of A3, or a Fitch's Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City Law Department.
- (b) Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.
- (c) Wherever this Section requires that insurance coverage be "at least as broad" as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Licensee can demonstrate that the alternative form or

endorsement contained in its policy provides coverage at least as broad as the specified form.

- (d) There shall be no self-insurance program or self-insured retention exceeding \$10,000 with regard to any insurance required under this Section unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Licensee 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.
- (e) The City's limits of coverage for all types of insurance required under this Section shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to the Licensee under all primary, excess and umbrella policies covering operations under this Agreement.
- (f) All required policies, except Workers' Compensation, Employer's Liability, Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

## **26.8 Proof of Insurance**

- (a) Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to or upon execution of this Amendment.
- (b) For Workers' Compensation, Employer's Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance coverage.
- (c) For all insurance required under this Section other than Workers' Compensation, Employer's Liability, and Disability Benefits Insurance, the Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form required by the Commissioner (attached hereto as **Exhibit F**) or certified copies of all policies referenced in such Certificate of Insurance.
- (d) Proof of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such proof of insurance shall comply with subsections (B) and

- (C) directly above.
- (e) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Section is secured and maintained, nor does it waive Licensee's liability for its failure to do so.
- (f) The Licensee shall provide the City with a copy of any policy of insurance required under this Section upon request by the Commissioner or the New York City Law Department.

## **26.9 Miscellaneous**

- (a) The Licensee may satisfy its insurance obligations under this Section through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.
- (b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).
- (c) The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City is an insured under the policy.
- (d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, the Licensee 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 the Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York, together with its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.
- (e) The Licensee's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute 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.
- (f) Insurance coverage in the minimum amounts provided for in this Section shall not relieve the Licensee of any liability under this License, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.
  - (g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Section, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.
  - (h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, the Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Section (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.
  - (i) In the event the Licensee 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, the Licensee shall immediately forward a copy of such notice to both the Commissioner, City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 10065, and the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

## **INVESTIGATIONS**

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

(b) (i) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political



subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

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

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

(ii) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 27(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:

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

(iii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(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 Section 27(e)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 27(e) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate

and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

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

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

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

(f) (i) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

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

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

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

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

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

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

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

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

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

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

**28.6** If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

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

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

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

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

**29.4** In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional

compensation any and all assistance which the City of New York may reasonably require of Licensee.

### **EMPLOYEES OF LICENSEE**

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

### **INDEPENDENT STATUS OF LICENSEE**

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

### **CONFLICT OF INTEREST**

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

### **PROCUREMENT OF AGREEMENT**

**33.1** Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents

and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

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

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

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

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

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

#### **JUDICIAL INTERPRETATION**

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

#### **MODIFICATION OF AGREEMENT**

**37.1** This License constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License may be modified from time to time by agreement in writing, but no modification of this License shall

be in effect until such modification has been agreed to in writing and duly executed by each of the parties to this License.

### **COUNTERPARTS**

**38.1** This License Agreement may be executed in several counterparts, which shall constitute one and the same instrument.

[Signature Page to Follow]

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

CITY OF NEW YORK  
PARKS & RECREATION

STATUE CRUISES, LLC

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

By: \_\_\_\_\_  
Mitch Randall  
Vice President

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

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            2021 before me personally came Alexander Han to me known, and known to be the Chief of Concessions of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and he acknowledged that he executed the same in her official capacity and for the purpose mentioned therein.

---

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this            day of            2021 before me personally came \_\_\_\_\_, who, being duly sworn by me did depose and say that he/she executed the foregoing instrument and acknowledged that he executed the same for the purposes mentioned therein.

---

Notary Public



## **EXHIBIT A**

### **SCHEDULE OF MINIMUM ANNUAL PAYMENTS**

#### **Operating Year 1**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/21	\$208,333.33	VS 10% OF GROSS
11/01/21	\$208,333.33	VS 10% OF GROSS
12/01/21	\$208,333.33	VS 10% OF GROSS
01/01/22	\$208,333.33	VS 10% OF GROSS
02/01/22	\$208,333.33	VS 10% OF GROSS
03/01/22	\$208,333.33	VS 10% OF GROSS
04/01/22	\$208,333.33	VS 10% OF GROSS
05/01/22	\$208,333.33	VS 10% OF GROSS
06/01/22	\$208,333.33	VS 10% OF GROSS
07/01/22	\$208,333.33	VS 10% OF GROSS
08/01/22	\$208,333.33	VS 10% OF GROSS
09/01/22	\$208,333.37	VS 10% OF GROSS
<b>Total:</b>	<b>\$2,500,000.00</b>	

#### **Operating Year 2**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/22	\$208,333.33	VS 10% OF GROSS
11/01/22	\$208,333.33	VS 10% OF GROSS
12/01/22	\$208,333.33	VS 10% OF GROSS
01/01/23	\$208,333.33	VS 10% OF GROSS
02/01/23	\$208,333.33	VS 10% OF GROSS
03/01/23	\$208,333.33	VS 10% OF GROSS
04/01/23	\$208,333.33	VS 10% OF GROSS
05/01/23	\$208,333.33	VS 10% OF GROSS
06/01/23	\$208,333.33	VS 10% OF GROSS
07/01/23	\$208,333.33	VS 10% OF GROSS
08/01/23	\$208,333.33	VS 10% OF GROSS
09/01/23	\$208,333.37	VS 10% OF GROSS
<b>Total:</b>	<b>\$2,500,000.00</b>	

#### **Operating Year 3**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/23	\$208,333.33	VS 10% OF GROSS
11/01/23	\$208,333.33	VS 10% OF GROSS
12/01/23	\$208,333.33	VS 10% OF GROSS
01/01/24	\$208,333.33	VS 10% OF GROSS
02/01/24	\$208,333.33	VS 10% OF GROSS
<b>Total:</b>	<b>\$1,041,666.65</b>	

## **EXHIBIT B**

### **SCHEDULE OF OPERATING HOURS**

Operating hours year round shall be as required by the National Park Service in connection with the Liberty and Ellis Island Ferry service, as required by regularly scheduled cruises, as requested by vessel charterers, or as required for other ferry services, subject to Parks's written approval.

### **SCHEDULE OF APPROVED FEES**

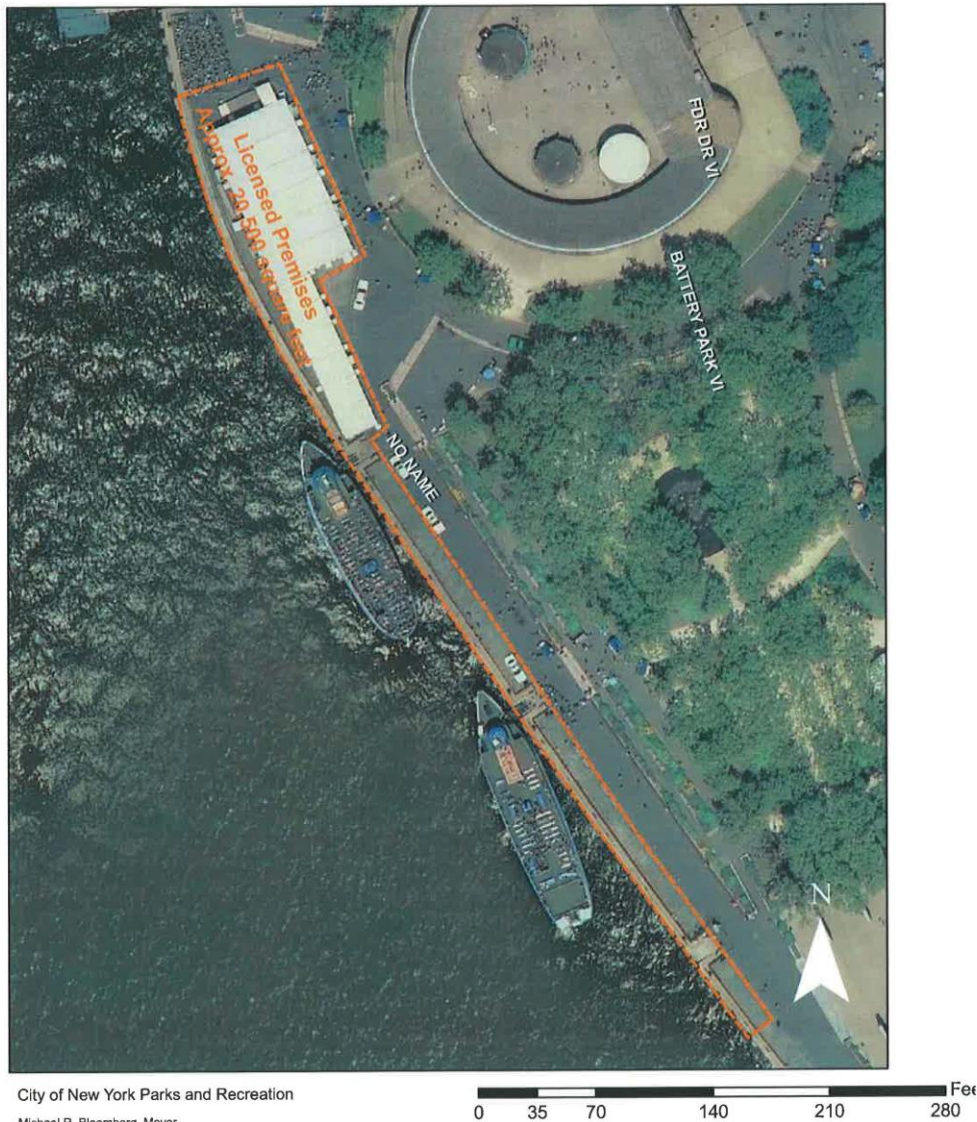
Adult - \$23.50  
Child - \$12.00  
Senior - \$18.00

## EXHIBIT C

### SITE PLAN OF LICENSED PREMISES

## License Agreement #M5-E-M

Battery Park  
Manhattan, New York



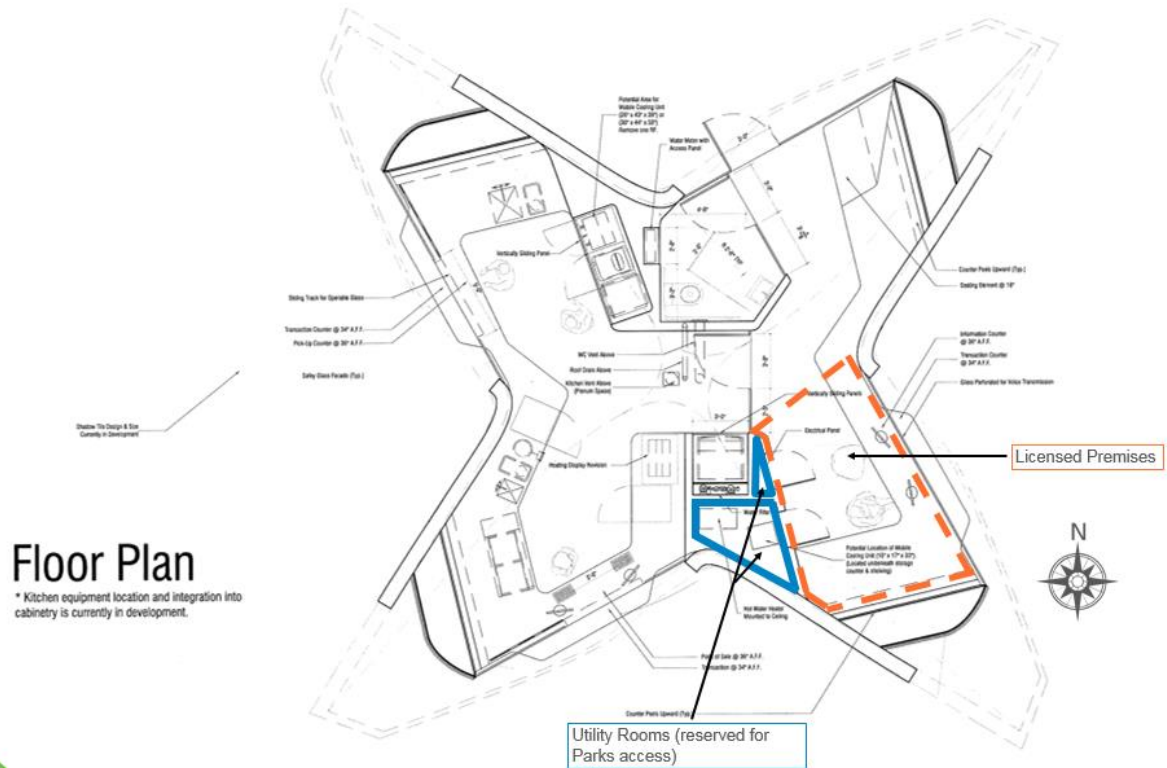
City of New York Parks and Recreation

Michael R. Bloomberg, Mayor  
Adrian Benepe, Commissioner

(c) 2009 City of New York/Parks and Recreation. May not be reproduced without consent.  
This map has been prepared in whole or part using secondary data.  
Data accuracy is limited by the scale and accuracy of the original sources.  
Site-specific conditions should be field-verified.  
For legal accuracy refer to the maps that established parks and acquisition maps.

----- Limit Line

## POTENTIAL TICKET KIOSK LICENSED PREMISES



NYC Parks

### New Amsterdam Plein and Pavilion at Peter Minuit Plaza

## **EXHIBIT E**

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

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

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

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

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

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

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

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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.

### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSL ( “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 PSL 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 PSL. 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 PSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements,

using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

### Exemptions and Exceptions

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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

### Records

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

### Enforcement and Penalties

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

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

### More Generous Policies and Other Legal Requirements

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



## **EXHIBIT F**

### **CERTIFICATES OF INSURANCE**

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

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

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

-- OR --

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

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

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

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

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

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

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

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

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

State of .....)

) ss.:

County of .....)

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

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

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

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

The New York City Department of Parks and Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval 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 with Statue Cruises, LLC for the operation of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan.

**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 sole source license agreement ("Agreement") with Statue Cruises, LLC for the operation and maintenance of passenger ferries for the purpose of embarking and discharging passengers on a regular schedule between The Battery, Liberty Island, and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to day and night charters of vessels, owned, operated or chartered by Statue Cruises, LLC at landing slips and adjacent walkways located in The Battery, Manhattan. The sole source license agreement will extend the previous term by three (3) years so that it expires February 29, 2024, conterminously with the agreement between the National Parks Service and Statue Cruises.

Compensation to the City will be as follows: Licensee shall pay to the City license fees consisting of the greater of a guaranteed minimum annual fee versus a percentage of gross receipts. (October 1, 2021 – September 30, 2022): \$2,500,000 vs. 10%; (October 1, 2022– September 30, 2023) \$2,500,000 vs. 10%; (October 1, 2023 – February 29, 2024): \$1,041,666.65 vs. 10%.

**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:**

The National Park Service ("NPS") and Statue Cruises, LLC ("Statue Cruises") are parties to an agreement by which Statue Cruises provides ferry services to the Statue of Liberty National Monument ("Statue of Liberty") and Ellis Island from The Battery, Manhattan. In 2021, the parties entered into a new agreement effective from March 01, 2021 through February 29, 2024. Statue Cruises is the only ferry operator licensed by NPS to operate at the Statue of Liberty and Ellis Island. The justification for this agreement was mitigation of the effects of the citywide shutdown due to the Covid-19 pandemic.

The current license agreement between Parks and Statue Cruises to operate and maintain a commercial ferry service to the Statue of Liberty and Ellis Island from The Battery, Manhattan expires on September 30, 2021.

Parks believes that it is in the City's best interest to ~~negotiate~~ enter into an amendment to the current ~~a new~~ sole source agreement to extend the previous term by three (3) years so that it expires on February 29, 2024, conterminously with the agreement between NPS and Statue Cruises.

Commented [SA(1): Agreement has already been negotiated.

Commented [CA(2R1): Okay

Commented [SA(3):

Since NPS is the only entity with power to grant access to the Statue of Liberty and Ellis Island, and Statue Cruises is the sole ferry service with an agreement with NPS to provide said service, Parks has determined that a competitive solicitation process for this concession is not warranted. Parks is committed to offering this service to the public. Due to Statue Cruises' relationship with NPS, Parks is requesting sole source approval to ~~negotiate an extension of the term of the current~~ enter into a new agreement ~~which would be to make it~~ coterminous with the agreement between NPS and Statue Cruises. Parks anticipates that, as part of the new License Agreement between Parks and Statue Cruises, ticket sales locations in The Battery may be included.

Commented [SA(4): Clarified language to make it clear this is a new agreement.

Commented [CA(5R4): Okay

For the reasons set forth above, Parks believes that it is in the City's best interest to ~~negotiate~~ enter into a new ~~an amendment to the current~~ sole source license agreement with Statue Cruises, LLC. for the operation and maintenance of passenger ferries for the purpose of embarking and discharging passengers on a regular schedule between The Battery, Liberty Island, and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to day and night charters of vessels, owned, operated or chartered by Statue Cruises, LLC at landing slips and adjacent walkways located in The Battery, Manhattan

Commented [AG(6): See comment on RD

Commented [CA(7R6): Okay

**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 **September 10, 2021**, 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 **September 10, 2021**, 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 in the newspapers indicated below. A copy of each such notice and amended notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by **September 10, 2021**,

- ☒ Villager Express, a NYC local newspaper published in the affected borough(s) on **9/23/21**  
☒ Downtown Express, a NYC local newspaper published in the affected borough(s) on **9/16/21**  
☒ Our Town Downtown, a NYC local newspaper published in the affected borough(s) on **9/16/21 & 9/23/21**

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

☒ A Public Hearing was conducted on 09/27/2021

**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.

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

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

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☒ Sole Source

☐ Other *Describe:*

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For the reasons set forth above, Parks believes that it is in the City's best interest to enter into a new sole source license agreement with Statue Cruises, LLC. for the operation and maintenance of passenger ferries for the purpose of embarking and discharging passengers on a regular schedule between The Battery, Liberty Island, and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to day and night charters of vessels, owned, operated or chartered by Statue Cruises, LLC at landing slips and adjacent walkways located in The Battery, Manhattan

**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 **September 10, 2021**, 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 **September 10, 2021**, 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 in the newspapers indicated below. A copy of each such notice and amended notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by **September 10, 2021**,

☒ Villager Express, a NYC local newspaper published in the affected borough(s) on **9/23/21**

☒ Downtown Express, a NYC local newspaper published in the affected borough(s) on **9/16/21**

☒ Our Town Downtown, a NYC local newspaper published in the affected borough(s) on **9/16/21 & 9/23/21**

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

☒ A Public Hearing was conducted on 09/27/2021

***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.



# CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

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

<b>AGENCY:</b> <u>New York City Department of Parks and Recreation ("Parks")</u>	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>Statue Cruises, LLC</u> <b>Address:</b> <u>1 Audrey Zapp Drive, Room 108B, Jersey City, NJ 07305</u> <b>Telephone # (201) 432-6321</b> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #20-8877253</b> <b>Not-for-Profit Organization</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>The operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan</u>  <b>CONCESSION I.D.#</b> <u>M5-E-M</u>
<b># VOTES required for proposed action</b> <b>= <u>4</u></b> <input type="checkbox"/> <b>N/A</b>		

## LOCATION OF CONCESSION SITE(S\*)

**Address** Landing Slips, Battery Park ☐ **N/A**

\*Attach additional sheet

**Borough** Manhattan **C.B. 1 Block # 3 Lot # 1**

## 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: Amendment to existing license agreement)  
 > FCRC approved different selection procedure on June 18, 2021.  
☐ Negotiated Concession\*

## CONCESSION AGREEMENT TERM

**Initial Term:** Three (3) years

**Renewal Option(s) Term:** N/A

**Total Potential Term:** Three (3) years

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

## ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ **Annual Fee(s)** \$ \_\_\_\_\_

☐ **% Gross Receipts** \_\_\_\_\_%

☒ **The Greater of Annual Minimum Fee(s) vs. % of Gross receipts:**

October 1, 2021 – September 30, 2022: \$2,500,000 vs. 10%;  
 October 1, 2022– September 30, 2023 \$2,500,000 vs. 10%;  
 October 1, 2023 – February 29, 2024: \$1,041,666.65 vs. 10%.

☐ **Other:**

## NOTIFICATION REQUIREMENTS

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

☐ **YES** ☒ **NO**

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

- ☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_/\_\_/\_\_, which was at least 30 days prior to its issuance.
- ☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the 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 04/30/2021, which was at least 40 days

in advance of the FCRC meeting on 06/09/2021 at which the agency sought and received approval to use a different selection procedure.

- ☐ The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

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

**Award is a major concession.**

☐ YES ☒ NO

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

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

**AUTHORIZED AGENCY STAFF**

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

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

- ☒ The concession was approved by the FCRC on \_\_\_\_\_
- ☐ The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

**Name** Alexander Han

**Title** Acting Chief of Concessions

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

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

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

**City Chief Procurement Officer**

# 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) )

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☒ Different Selection Procedure: \* (☒ Sole Source Agreement ☐ Other: Amendment to existing license agreement)  
 > FCRC approved different selection procedure on June 9, 2021.  
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**Name** Alexander Han

**Title** Acting Chief of Concessions

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

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

**City Chief Procurement Officer**