



NYC Parks

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Parks & Recreation**

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## **MEMORANDUM**

**TO:** Hon. Mark Levine, President of the Borough of Manhattan  
Ebenezer Smith, District Manager, Manhattan Community Board 12

**FROM:** Phil Abramson, Director of Revenue Communications *PA*

**SUBJECT:** Notice of Joint Public Hearing, September 12, 2022: Intent to award as a concession the use, maintenance and operation of rowing facilities at Sherman Creek, Manhattan, to Row New York Inc. Concession No. M300-O

**DATE:** August 26, 2022

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation ("NYC Parks") to be held remotely via a Microsoft Teams dial-in on Monday, September 12, 2022 at 2:30 p.m. relative to:

INTENT TO AWARD as a concession for the use, maintenance and operation of rowing facilities at Sherman Creek, Manhattan, for a twenty (20) year term, to Row New York Inc. ("Licensee"). All gross receipts received by Licensee will be used exclusively to pay all costs incurred by Licensee in operating, repairing, maintaining and managing the Licensed Premises and in performing Licensee obligations and providing services required or permitted by this Agreement ("Expenses"). If the gross receipts received by Licensee for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year.

The public may participate in the public hearing by calling the dial-in number below. Written testimony may be submitted in advance of the hearing electronically to [frc@mocs.nyc.gov](mailto:frc@mocs.nyc.gov). All written testimony must be received by September 9, 2022. In addition, the public may also testify during the hearing by calling the dial-in number. The dial-in information is below:

Dial-in #: +1-646-893-7101  
Access Code: 834 265 443 #  
Press # on further prompts

A draft copy of the agreement may be obtained at no cost by any of the following ways:

- 1) Submit a written request to NYC Parks at [concessions@parks.nyc.gov](mailto:concessions@parks.nyc.gov) from **September 2, 2022** through **September 9, 2022**.
- 2) Download from **September 2, 2022** through **September 12, 2022** on NYC Parks' website. To download a draft copy of the agreement, visit <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis>
- 3) Submit a written request by mail to NYC Department of Parks and Recreation, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received




NYC Parks

by **September 2, 2022**. For mail-in requests, please include your name, return address, and Concession # M300-O.

A transcript of the hearing will be posted on the FCRC website at

<https://www1.nyc.gov/site/mocs/reporting/agendas.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at [DisabilityAffairs@mocs.nyc.gov](mailto:DisabilityAffairs@mocs.nyc.gov) or via phone at (646) 872-0231. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least five (5) business days in advance of the hearing to ensure availability. 

# 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>Row New York Inc.</u> <b>Address:</b> <u>252 West 37<sup>th</sup> Street, 4<sup>th</sup> Floor, New York, NY 10018</u> <b>Telephone # (718) 433-3075</b> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #11-3632924</b> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source License Agreement with Row New York Inc. for the use, maintenance and operation of rowing facilities at Sherman Creek, Manhattan.</u>
<b># VOTES required for proposed action</b> <b>= <u>4</u></b> <input type="checkbox"/> <b>N/A</b>	<b>CONCESSION I.D.#</b> <u>M300-O</u>	

## LOCATION OF CONCESSION SITE(S\*)

**Sherman Creek**

**Address** Harlem River Drive, 10<sup>th</sup> Avenue

**Borough** Manhattan **C.B.** 12 **Block #** 2150 **Lot #** 1

☐ **N/A** \*Attach additional sheet

## SELECTION PROCEDURE

(\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
- ☐ Competitive Sealed Proposals\* ( ☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_ )
- ☒ Different Selection Procedure: \* ( ☒ Sole Source Agreement ☐ Other \_\_\_\_\_ )
- > FCRC approved different selection procedure on 06/13/2018.
- ☐ Negotiated Concession\*

## CONCESSION AGREEMENT TERM

**Initial Term:** Twenty (20) Years from Notice to Proceed

**Renewal Option(s) Term:** n/a

**Total Potential Term:** Twenty (20) Years

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

## ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ **Annual Fee(s)** \$ \_\_\_\_\_

☐ **% Gross Receipts** \_\_\_\_\_%

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

☒ **Other**

All gross receipts received by Licensee will be used exclusively to pay all costs incurred by Licensee in operating, programming, repairing, maintaining and managing the Licensed Premises and in performing Licensee obligations and providing services required or permitted by this Agreement ("Expenses"). If the gross receipts received by Licensee for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year.

## 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 05/04/2018, which was at least 40 days in advance of the FCRC meeting on 06/13/2018 at which the agency sought and received approval to use a different selection procedure.
- ☐ The Agency certifies that each affected CB/BP received written notice on \_\_\_/\_\_\_/\_\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_\_/\_\_\_/\_\_\_.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_\_/\_\_\_/\_\_\_.

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

**Award is a major concession.**

☐ YES    ☒ NO

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

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

**AUTHORIZED AGENCY STAFF**

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

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

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

**Name**      **Alexander Han**

## Title 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**

**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 (the "Agreement") with Row New York Inc. ("Licensee") for the use, maintenance and operation of rowing facilities at Sherman Creek, 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 term of this Agreement shall be twenty (20) years and shall commence on Parks' giving written notice to proceed to Licensee.

All gross receipts received by Licensee will be used exclusively to pay all costs incurred by Licensee in operating, programming, repairing, maintaining and managing the Licensed Premises and in performing Licensee obligations and providing services required or permitted by the Agreement ("Expenses"). If the gross receipts received by Licensee for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year.

**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:**

Launched in 2002 with one borrowed boat and eight eager rowers, Row New York Inc. ("Row NY"), a non-profit organization, empowers young people from under-resourced communities to develop confidence, build strength, and pursue excellence by participating in the competitive sport of rowing, while receiving ancillary academic support. Row NY's programming includes a year-round intensive youth program for 8<sup>th</sup>-12<sup>th</sup> graders, physical education classes for students in District 75 schools, summer camps, and adaptive programs for athletes with physical and cognitive disabilities. Row NY currently rows out of two NYC Parks locations: the World's Fair Boathouse on Meadow Lake in Flushing Meadows Corona Park, Queens; and the Peter Jay Sharp Boathouse (PJSB) at Sherman Creek Park on the Harlem River in Inwood. Row NY has remained in excellent standing with NYC Parks and has had an impeccable safety record.

Row NY has operated PJSB at Sherman Creek Park since 2012 (through a sub-license with the New York Restoration Project, who operates and maintains sections of Sherman Creek Park via a license agreement with NYC Parks), offering year-round rowing and academic instruction to 120 middle and high school students,

two-thirds of whom reside in nearby communities. Row NY recruits 70% of its student-athletes from under-resourced schools in the local community, many of which offer only limited athletic opportunities. Approximately 64% of their students come from families with household incomes below \$50,000 and 82% of their students identify as people of color. All of these student-athletes participate in the year-round program for free. The organization charges a participation fee for the remaining 30% of the student-athletes who add to the socio-economic diversity of the program and help ensure its sustainability.

In the youth rowing programs, Row NY's middle school student-athletes row two times a week and high school student-athletes row five times a week. All student-athletes receive instruction and coaching in water safety, rowing basics, swim lessons, and competitive racing. In support of the primary rowing programs, student-athletes also participate one to three afternoons a week in academic sessions. Geared toward improving academic performance and college readiness, these sessions include, among other things, SAT and high school test preparation, small group tutoring, assistance with college and financial aid applications, and college field trips.

Through the Agreement, Row NY will construct and operate an approximately 18,000-square-foot community boathouse to replace and expand the existing space at PJSB. PJSB's location on water subjects it to continuous stress from currents, tidal fluctuations, and large boat wakes, which has impacted the structural integrity of the boathouse. PJSB requires substantial immediate repairs in addition to ongoing repairs and maintenance, the costs of which are unsustainable. Absent construction of a new facility, Row NY would need to suspend operations at Sherman Creek within the next three years.

It is anticipated that the proposed community boathouse would:

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

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

To support its plans, it is anticipated that Row NY will contribute up to \$37 million to the boathouse project, of which \$27 million has already been committed to date by private donors. The Agreement with Row NY will allow the organization to collect fees for a portion of programs offered at the boathouse, the proceeds of which will be used to offset a portion of the costs of providing programming and of operating and maintaining the facility. Proceeds from use of the facility are projected to represent between 15% and 30% of total facility expenses. The balance of annual costs will be funded by Row NY through private fundraising.

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

**D. PUBLIC HEARING**

☐ N/A – Subject award NOT a significant concession]<sup>1</sup>

**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 08/26/2022, 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 08/26/2022, 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 containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 08/26/2022.

☒ Our Town, a NYC local newspaper published in the affected borough(s) on 09/01/2022 and 09/08/2022.

☒ West Side Spirit, a NYC local newspaper published in the affected borough(s) on 09/01/2022 and 09/08/2022.

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

☒ A Public Hearing was conducted on 09/12/2022.

**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.

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

**(Cal. No. x)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with Row New York Inc. ("Licensee") for the use, maintenance and operation of rowing facilities at Sherman Creek, Manhattan. All gross receipts received by Licensee will be used exclusively to pay all costs incurred by Licensee in operating, programming, repairing, maintaining and managing the Licensed Premises and in performing Licensee obligations and providing services required or permitted by this Agreement ("Expenses"). If the gross receipts received by Licensee for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year. The term of this Agreement shall be twenty (20) years and shall commence on Parks' giving written notice to proceed to Licensee.

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

September 14, 2022

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

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

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



**LICENSE AGREEMENT**

**BETWEEN**

**ROW NEW YORK, INC.**

**AND**

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

**FOR THE USE, MAINTENANCE AND OPERATION OF ROWING FACILITIES AT  
SHERMAN CREEK**

**MANHATTAN, NEW YORK**

**Contract No.: M300-O**

**DATED: \_\_\_\_\_, 2022**

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**EXHIBITS:**

<b>EXHIBIT A:</b>	Licensed Premises
<b>EXHIBIT B:</b>	Approved Programming
<b>EXHIBIT C:</b>	Schedule of Approved Program Rates and Fees
<b>EXHIBIT D:</b>	Schedule of Capital Improvements
<b>EXHIBIT E-1:</b>	PIP Manual
<b>EXHIBIT E-2:</b>	RECAP Manual
<b>EXHIBIT F:</b>	Clean Boatyard Practices and Emergency Response Plan
<b>EXHIBIT G:</b>	Parks Standard Signage Regulations
<b>EXHIBIT H:</b>	Director of Rowing Operations Duties
<b>EXHIBIT I:</b>	Background Checks Rider
<b>EXHIBIT J:</b>	Paid Sick Leave Law
<b>EXHIBIT K:</b>	Form of Report Under New York City Administrator Code Section 18-134
<b>EXHIBIT L:</b>	City of New York Certification by Insurance Broker or Agent
<b>EXHIBIT M:</b>	Diagram of Docks
<b>EXHIBIT N:</b>	List of Approved Vessels for Docking
<b>EXHIBIT O:</b>	Payment Guarantee Requirements

**THIS LICENSE AGREEMENT** (“License Agreement” or “License” or “Agreement”) made this \_\_\_\_\_ day of \_\_\_\_\_, 2022, between the **City of New York (the “City”)** a municipal corporation of the State of New York acting by and through the **New York City Department of Parks & Recreation (“Parks” or “Licensor”)**, whose address is The Arsenal, 830 Fifth Avenue, New York, NY 10065, and **Row New York Inc. (“Row NY” or “Licensee”)**, a Not-for Profit Corporation whose address is 252 West 37th Street, 4th Floor, NY, NY 11018.

**WITNESSETH:**

**WHEREAS**, Parks, pursuant to Section 533 of the New York City Charter, has jurisdiction over parklands of the City of New York and facilities therein; and

**WHEREAS**, the Commissioner of Parks (“Commissioner”) pursuant to Section 533 of the New York City Charter is charged with the responsibility for the management, maintenance and operation of parks and recreational facilities under Parks jurisdiction, and has the authority to plan, develop, conduct and enter into arrangements, with private organizations for their participation in the improvement of their community by undertaking the maintenance and operation of recreational facilities; and

**WHEREAS**, the Commissioner has jurisdiction over Block 2150 Lot 1 of Sherman Creek Park as shown in **Exhibit A**, attached hereto and further defined herein in the Borough of Manhattan; and

**WHEREAS**, the Commissioner desires to ensure the best use of the Licensed Premises, as defined in Section 3.1(y) below, with the greatest variety of well-run recreational programs and services for the public; and

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

**WHEREAS**, Pursuant to its Certificate of Incorporation, Licensee is a non-profit organization whose goal is to empower young people from under-resourced communities to develop confidence, build strength, and pursue excellence by pairing the competitive sport of rowing with intensive academic support; and

**WHEREAS**, Licensee serves more than 2,200 youth and adults yearly across all their programs, including free and fee based learn-to-row sessions, training at both novice and master levels, summer camps, para-rowing for athletes with disabilities, and team-building days; and

**WHEREAS**, Licensee offers free events to the general public, including Learn to Row Days; and

**WHEREAS**, Licensee and Parks intend to develop an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, will undertake substantial responsibility for public programming, specific maintenance and capital improvements at the Licensed Premises; and

**WHEREAS**, Licensee wishes to use, occupy, maintain and operate the Licensed Premises for the public's benefit by offering free competitive rowing and other programs to the public; and

**WHEREAS**, Licensee also desires to operate fee-based rowing programs as further described herein, and maintain and operate the Licensed Premises in accordance with the terms set forth herein; and

**WHEREAS**, Parks sought approval of the Franchise and Concession Review Committee ("FCRC") who has authorized Parks to use different procedures to enter into this License Agreement with Licensee; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation of free and fee-based rowing programs, and the maintenance and operation of the Licensed Premises.

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

## **ARTICLE 1 GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from the Commissioner this License to use, occupy, maintain, and operate the Licensed Premises for the purposes specified herein, in accordance with the terms and conditions set forth herein to the Commissioner's reasonable satisfaction.

**1.2** The Commissioner shall not issue a new license for the Licensed Premises to another party, including a party providing waterfront activities at the Licensed Premises during the Term, as defined in Section 4.1 below. Notwithstanding the aforementioned, Parks shall continue to issue boating permits to the general public allowing for use of the Docks and the Sherman Creek Park. Further, Parks shall operate and maintain the Public Boat Storage as set forth and permitted in Section 5.4 hereof. Parks may sublicense the Public Boat Storage operations and maintenance to a concessionaire.

**1.3** Licensee shall obtain any and all applicable permits, approvals, 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. 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. 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.

**1.4** Licensee is hereby authorized and agrees to provide the following at the Licensed Premises:

**(a)** Free rowing programs ("Free Rowing Programs") to the general public as further described in **Exhibits B and C**.

(b) Free educational programs to youth as further described in **Exhibits B and C**.

(c) Programs for a fee (“Fee-Based Rowing Programs”) to the general public as described in **Exhibits B and C**.

(d) Licensee may enter into Sponsorships and other forms of recognition with a Sponsor. Licensee may install Sponsorship Recognition for a Sponsor, all subject to the prior written approval of Parks, including, but not limited to, approval over the size, quantity and location of such Sponsorship Recognition and shall be subject to applicable laws, rules and regulations. Licensee may submit to Parks for its approval, proposed plans or mock-ups for Sponsorship Recognition, and if Parks approves any such proposed plans or mock-ups, then Licensee shall be entitled to use Sponsorship Recognition without any further approval of Parks so long as such Sponsorship Recognition is not materially different from the proposed plans or mock-ups theretofore approved by Parks. In recognition of the commercial exigencies of product promotions, Licensee shall submit to Parks for its approval Sponsorship Recognition or related plans or mock-ups promptly after any of the foregoing is available, and Parks shall endeavor in good faith to review any submissions and respond with its approval or comments as expeditiously as practicable.

(e) Subject to the reasonable prior written approval of the Commissioner, Licensee, as part of its mission may provide additional free services and programming open to the public in the Licensed Premises, including, without limitation, rowing, education, athletics, maintenance, programs, and concerts.

(f) Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or other entities as may be required for any music or music programming operated by Licensee or any sublicensee during Licensee’s programming.

(g) Licensee shall not permit or engage in any revenue generating activities on the Licensed Premises outside of those set forth in this Agreement and any additional revenue generating activities shall be subject to any and all City authorization, approvals, permits, and compliance with other processes which may be necessary, including without limitation, any necessary approval by the FCRC.

## **ARTICLE 2 NO LEASE**

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

## **ARTICLE 3 DEFINITIONS**

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

(a) “Alteration” shall mean (excepting ordinary repair and maintenance) (i) any restoration, rehabilitation, modification, renovation, or improvement to the Licensed Premises; (ii) any work or construction which would or might affect in any manner or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas; (iii) any work affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems; (iv) affixing or installing any equipment to any area of the Licensed Premises; (v) any seasonal landscaping that constitutes a significant departure from landscaping previously done by Licensee. The following do not constitute an Alteration: (A) landscaping that does not involve the installation, replacement, modification or relocation of Fixed and Additional Fixed Equipment and that is similar to landscaping previously done by Licensee, including, without limitation, planting, maintaining and removing grass, trees, flowers, beds or shrubbery, (B) installation of Expendable Equipment, (C) repair and maintenance of Expendable Equipment or Fixed and Additional Fixed Equipment, including painting any such equipment, and (D) replacement of Fixed and Additional Fixed Equipment in kind.

(b) “ADA” shall mean the Americans with Disabilities Act.

(c) “ADA Path” shall mean the to-be-constructed, paved path which complies with the ADA that commences at the entry plaza at the southwest corner of the Building and terminates at the Building Apron, as depicted on Exhibit A.

(d) “Boating Season” shall mean the period from April 1st to December 1st each year, or as otherwise extended by the Commissioner.

(e) “Building” shall mean the Row NY building constructed in accordance with the plans submitted by Row NY and approved by Parks.

(f) “Building Apron” shall mean the area on the waterfront side of the Building between the Building and the Docks as further depicted on Exhibit A.

(g) “Building Hours” shall mean the hours of operation of the Building as approved by Parks.

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

(i) “Capital Improvements” shall mean all construction, reconstruction or renovation of the Licensed Premises, and shall include architectural and design fees necessary to implement the Capital Improvements. Capital Improvements shall also include all Alterations and Additional Fixed Equipment, as that term is defined in Section 3.1(t)(i) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises. Capital Improvements shall also include those activities described in Article 8 herein and the Schedule of Capital Improvements annexed hereto as **Exhibit D**, and made a part of this Agreement.

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

(k) “Dock Access System” shall mean the system at the Licensed Premises that allows HPW Permit Holders and Row NY to unlock the Dock Gate and access the Docks.

(l) “Dock Gate” shall mean the security gate installed at the entrance to the Docks and affixed onto the Licensed Premises by Licensee pursuant to this Agreement, as so denoted on **Exhibit M**.

(m) “Docks” shall mean the dock and gangway structure constructed and affixed onto the Licensed Premises by Licensee pursuant to this Agreement, as so denoted on **Exhibit M**.

(n) “Donor Recognition” shall mean all signs, graphics and other displays that recognize the financial contributions of the donors identified by Licensee in connection with the Licensed Premises, Free Rowing Programs, Fee-Based Rowing Programs, Licensee’s Special Events or other programs at the Licensed Premises.

(o) “Excess Revenues” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and Expenses for such Fiscal Year.

(p) “Expendable Equipment” shall mean all equipment and property of Licensee, other than Additional Fixed Equipment and shall include the following:

- (i) Boats, including but not limited to, shells, barges and safety launches, and all of their removable components
- (ii) Boat racks
- (iii) Storage containers for Row NY program materials
- (iv) Picnic tables
- (v) Workshop and gardening tools
- (vi) Rowing oars
- (vii) Athletic equipment, including but not limited to, rowing machines, weight racks, free weights and yoga mats
- (viii) Rowing trailers
- (ix) Portable generators and power tools
- (x) Refrigerators and ice makers
- (xi) Safety equipment, including but not limited to, vhf radios, life jackets, paddles and megaphones

(q) “Expenses” means all costs incurred by Licensee in operating, repairing, maintaining and managing the Licensed Premises and in performing Licensee obligations and providing services required or permitted by this Agreement, including sanitation, security,



programming and horticulture, performing Alterations, installing Additional Fixed Equipment and Expendable Equipment. The personnel whose cost is included as an Expense includes those persons performing services at the Licensed Premises, such as recreational and educational programming as well as those persons responsible for the supervision of the Licensed Premises. The categories of Expenses each Fiscal Year shall be consistent with the line items contained in the Annual Operating Budget and Operating Plan of Licensee for such Fiscal Year. Expenses shall exclude the salary of the Executive Director of Licensee or any successor title and the costs and expenses attributable to Licensee's charitable fund-raising staff.

(r) "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 writing that it has been finally completed and that no further work is required by Licensee pursuant to this License 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 License Agreement.

(s) "Fiscal Year" shall mean Row NY's fiscal year, currently July 1<sup>st</sup> to June 30<sup>th</sup>.

(t) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises at the time Notice to Proceed is given, whether or not removal of said equipment would damage Licensed Premises. Fixed Equipment includes, without limitation, Docks and piers.

(i) "Additional Fixed Equipment" shall mean property affixed to the Licensed Premises subsequent to the date Notice to Proceed is given. Additional Fixed Equipment may include, without limitation, docks, walls, structures, light poles, paving stones and concrete and similar ground surfaces, benches affixed to the ground, chairs affixed to the ground, and fences and gates affixed to the ground.

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

(u) "Force Majeure" shall mean climatic conditions, storms, floods, droughts, tidal waves, fires, hurricanes, earthquakes, landslides or other catastrophes or acts of God; acts of war or of the public enemy or terrorist acts; disruption, outage or power failure caused by a utility's inability or failure to provide service, epidemics, outbreaks of infectious disease or any other public health emergency; other states of emergency or governmental restrictions declared by the City, State or Federal government, and freight embargoes; including the City's reasonable responses to any of the above.

(v) "Gross Receipts" shall include, without limitation, all funds or other consideration received by Licensee, without deduction or set-off of any kind, from Fee-Based Rowing Programs (as defined below), any of Licensee's Special Events (as defined below) or other events authorized by Parks, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee or any sublicensee. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be

made outside, or away from the Licensed Premises, and shall include all receipts of Licensee or any sublicensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee or any sublicensee outside thereof. For example, if Licensee or any sublicensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises. 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 received by Licensee shall be included in Gross Receipts. Gross Receipts shall include receipts from all Sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities. Notwithstanding anything set forth in this Section 3.1 (v), Licensee shall comply with all applicable laws, rules and regulations, including but not limited to City, State and federal labor laws.

**(w)** “HPW” shall mean human-powered watercraft such as kayaks, canoes, rowboats, stand-up paddleboards, or any other artificial contrivances that are used, or capable of being used, as a means of transportation on water and that is propelled by human power.

**(x)** “HPW Permit Holders” shall mean those individuals who have obtained a permit from Parks pursuant to 56 RCNY §2-06 to operate HPWs.

**(y)** “Licensed Premises” or “Premises” shall mean the area so denoted on **Exhibit A** and contain the following features:

- (i) the Building (upon substantial completion of same, pursuant to Section 8.23);
- (ii) Docks, Dock Gate and Dock Access System;
- (iii) the Building Apron; and
- (iv) stairways and pathways on the north and south sides of the Building, but not including the ADA Path.

**(z)** “Marginal Way” shall mean the street that runs in front of and that is used to access the Licensed Premises.

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

**(bb)** “Public Boat Storage” shall have the meaning assigned to it in Section 5.4(b).

**(cc)** “Special Events” shall mean special events as defined in 56 RCNY §1-02 permitted by Parks at the Licensed Premises.

**(dd)** “Sponsor” shall mean an entity, individual or organization who contributes funding, goods or in-kind services to Row NY in furtherance of improving New York City Parks including the maintenance, programming and operations thereof. A Sponsor shall not include an entity, individual or organization who donates funding, goods or in-kind services to Row NY where there is no recognition displayed at or on the Licensed Premises.

**(ee)** “Sponsorship” shall mean a contribution by an entity, individual or organization of funding, goods or in-kind services to Row NY in furtherance of improving New York City Parks including the maintenance, programming and operations thereof. Sponsorship shall not include a donation by an entity, individual or organization of funding, goods or in-kind services to Row NY where there is no recognition displayed at or on the Licensed Premises. All Sponsorship must be approved in writing in advance by Parks.

**(ff)** “Sponsorship Recognition” shall mean a temporary sign, graphic or other display that recognizes the financial contribution of the Sponsor identified therein to Licensee, the Licensed Premises, a Licensee’s Special Event or other program at the Licensed Premises. All Sponsorship Recognition must be approved in writing in advance by Parks.

**(gg)** “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.

#### **ARTICLE 4 TERM & TERMINATION**

**4.1** This License shall become effective upon registration with the Comptroller’s Office and commence upon the date written in a written “Notice to Proceed” (the “Notice to Proceed”) issued to Licensee (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate twenty (20) years from the Commencement Date (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Expiration Date shall be referred to as the “Term.”

**4.2** Notwithstanding any language contained herein, this License is terminable at will upon the Commissioner’s written notice 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. The Commissioner, the City and its officials, employees, and agents shall not be liable for damages to Licensee resulting from an early termination of this License as provided for herein. If such notice is not given, this License shall terminate as otherwise set forth in this Article 4.

**4.3** Intentionally left blank.

**4.4** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions owned by Licensee from the Premises and leave the Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of

property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement.

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

(a) Should Licensee or any sublicensee breach or fail to comply with any of the provisions of this License or any Federal, State or local law, rule, regulation or order affecting this License, such sublicensee or the Licensed Premises, the Commissioner shall in writing order Licensee to remedy such breach or failure. If Licensee fails to remedy such breach or failure within thirty (30) days following the mailing or other transmission of such written order, then the Commissioner shall have the right to terminate this Agreement. Notwithstanding the foregoing, if such breach or failure cannot be remedied within such thirty (30) day period given the nature and scope of such breach or failure or due to reasons beyond Licensee's control, as reasonably determined by Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's reasonable judgment to cure such breach. If such breach or failure arises from the acts or omissions of a sublicensee, as reasonably determined by Commissioner, the cure period shall be reasonably extended by Commissioner beyond such thirty (30) days (not to exceed an additional 30 days) to give Licensee time to induce such sublicensee to comply with such breach or failure or, if such sublicensee fails to remedy such breach or failure in a timely manner, for Licensee to terminate the applicable sublicense and regain possession of the sublicensed Premises. If a breach or failure to comply is corrected in accordance with this Section 4.5(a), and a repeated violation of the same provision, law, rule, regulation or order follows within a twelve (12) month period thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing or other transmission thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) days notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors by Licensee; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; and 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.

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

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

**4.8** Licensee shall, on or prior to the date that is fifteen (15) days following the expiration or sooner termination of this License (the fifteen (15) day period beginning on the expiration or

sooner termination of this License being the “Removal Period,” and the last day of the Removal Period being the “Removal Deadline”), remove from the Licensed Premises and shall cause any sublicensee to remove, all Expendable Equipment, all Capital Improvements and Alterations or minor alterations that are not Additional Fixed Equipment, and Additional Fixed Equipment to which the City has not taken title pursuant to Sections 6.1, 8.23, or 9.2(b), as applicable (such equipment being “Removal Equipment”). Licensee acknowledges that any Removal Equipment remaining on the Licensed Premises after the Removal Deadline shall be deemed to be abandoned. Licensee shall remain liable to the City for the cost of removal or disposal of Removal Equipment, should Licensee fail to remove all Removal Equipment from the Licensed Premises by the Removal Deadline. During the Removal Period, Licensee shall have the right to enter the Licensed Premises to remove any Removal Equipment, provided that Licensee shall maintain the insurance required by Article 26 hereof during the Removal Period and shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims and demands of third parties for injury, including death or property damage arising out of any such entry and removal, and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements), arising from any such claims or demands. In addition, if the removal of Removal Equipment results in damage to the Licensed Premises and Licensee or such sublicensee fails to repair such damage to the Commissioner’s reasonable satisfaction and upon such deadline as reasonably determined by the Commissioner, then Licensee shall be responsible for the cost of such repair which shall be promptly paid to Parks upon Parks’ written demand to Licensee (the cost of such removal and the cost of such repair being collectively, “Removal Costs”).

**4.9** In addition to Removal Costs, Licensee shall be liable to Parks for the following damages if Parks terminates this Agreement pursuant to Section 4.5:

(a) if Parks terminates this Agreement pursuant to Section 4.5 on account of the failure of Licensee to comply with Licensee’s maintenance obligations under this Agreement, the reasonable costs borne by Parks to perform the specific maintenance obligations that Licensee failed to perform in accordance with this Agreement, and

(b) if at the time of any such termination, Licensee commenced an Alteration and fails to complete such Alteration, Licensee shall be liable for the cost to complete such Alteration which shall be promptly paid to Parks upon Parks’ written demand to Licensee; provided, however, that unless the performance by Licensee of such Alteration was the basis for Parks terminating this Agreement pursuant to Section 4.5, at the parties’ mutual election Licensee shall have the right to complete such Alteration at Licensee’s expense and the termination of this Agreement on account thereof shall be suspended until such Alteration is completed to the extent necessary for the purposes of completing such Alteration. During such time, the Insurance and Indemnification requirements of this Agreement shall remain in force. Except for Removal Costs and such other damages and other sums as are set forth in Sections 4.8 and 4.9, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 4.5. Except for Removal Costs, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 4.2.

**4.10** If this License is terminated as provided in Section 4.2 or 4.5 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises

without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any sublicensee by summary proceedings or other legal means.

**4.11** Except as otherwise provided in Section 4.9, if this License is terminated as provided in Section 4.5 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or any sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable, which will not be at Licensee's expense, and Parks may relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

**4.12** No receipt of moneys by Parks from Licensee or any sublicensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee or any sublicensee, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy.

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

## **ARTICLE 5 MAINTENANCE AND OPERATIONS**

**5.1 Maintenance.** Licensee shall at its own cost and expense perform, or cause third parties to perform, maintenance, and in cooperation with Parks, make repairs to the Premises to the Commissioner's reasonable satisfaction in accordance with the standards set forth herein. Licensee shall perform all such maintenance and repair in a good and workmanlike manner. Licensee shall use its best efforts to achieve compliance with the rating standards for all enumerated categories set forth in the Parks Inspection Program (PIP) Manual, attached hereto as **Exhibit E-1**, and the Recreation Evaluation and Center Assessment Program Manual (2010 Edition), attached hereto as **Exhibit E-2**, both incorporated herein by reference.

**5.2** Licensee at its sole cost and expense shall be responsible for all daily maintenance of the Licensed Premises including but not limited to maintaining the Licensed Premises in a good, clean, and orderly condition, ordinary wear and tear excepted. Such maintenance shall also include, but not be limited to:

**(a) Cleaning.**

(i) Dirt, litter and obstructions shall be collected and removed daily (seven days a week), and garbage, trash, and leaves, collected and removed by Licensee on a regular basis, as needed. Licensee shall be responsible for removal of all other materials, including construction debris and abandoned vessels. Licensee shall be responsible for disposal of garbage from Licensee's Special Events. Dirt, litter, obstructions, garbage, trash and leaves shall be collected so as to maintain the Licensed Premises in a clean, neat and good condition. At no time may any garbage, trash and litter, including but not limited to



construction debris generated at the Licensed Premises (excluding any construction debris resulting from the construction of approved Alterations and Capital Improvements which is removed in the ordinary course of construction), be stored on the Licensed Premises or placed within Parks containers without the express written approval of the Parks' Manhattan Borough Commissioner. Licensee is prohibited from bringing any garbage, trash, litter and natural debris not generated at the Licensed Premises to the Licensed Premises for disposal.

(ii) All walkways, sidewalks and all pavements and facilities in the Licensed Premises including comfort stations, recreational facilities, docks, piers and boathouses, shall be routinely cleaned and maintained so as to keep such improvements and facilities in a clean, neat and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface, within forty-eight (48) hours of Licensee noticing or being informed of the presence of graffiti on the Licensed Premises.

(iv) Drains, sewers and catch basins on the Licensed Premises shall be cleaned regularly to prevent clogging.

(v) Branches and trees damaged or felled shall be promptly set aside for removal by the City.

(vi) Licensee shall remove or shall cause the removal of all boats, docks, vehicles or other property abandoned at the Licensed Premises in connection with its activities or any sublicensee or permittee. Licensee shall promptly notify Parks of any abandoned boats or vehicles at the Licensed Premises that it becomes aware of.

(vii) Licensee shall maintain, and clean the restrooms at the Licensed Premises in a manner reasonably approved by Parks. In addition, Licensee shall stock all necessary supplies, and make any necessary repairs to such restrooms.

**(b) Snow Removal.** Snow and ice shall be removed from all walking paths and docks in accordance with New York City Administrative Code §16-123 so as not to interfere with safe passage. Sand and/or salt shall be spread as needed.

**(c) Landscape Maintenance.** Licensee shall perform the following landscape maintenance work on the Licensed Premises:

(i) Supply, maintain and replace woodchips as required.

(ii) Prune and trim trees and shrubs, in each case, to the extent reachable from the ground, that are overextended, dead or are otherwise unsafe or unsightly, to maintain their natural form, Pruning of large trees that require climbing shall not be the responsibility of, nor shall it be performed by, Licensee.

(iii) Remove or destroy any weeds and invasive vines from paving blocks, pavement, cobbled and concrete areas.

(iv) Apply fertilizer to trees, shrubs, plants and other lawn areas, as appropriate. Licensee will be permitted to develop integrated pest management and fertilization protocols based on ecological sustainability goals, which are acceptable to Parks. Licensee may not spray pesticides at the Licensed Premises.

(v) Replace any plants or trees that are dead, diseased and/or otherwise unhealthy with healthy specimens of substantially equal type and reasonable size, where appropriate. The planting or removal of any trees shall be performed as required on a year round basis, and requires prior written approval from Parks Director of Manhattan Forestry.

(vi) Reseed and/or resod grass-covered areas as needed.

(vii) Rake and collect leaves.

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

(ix) Mow and edge grass-covered areas and weed-whack lawn edges one (1) time per week from April to October or more as needed. Perform turf management as needed on a year round basis. Install new or replacement plantings in the fall and the spring as deemed necessary by Licensee, any new plantings to be approved in writing by Parks in advance. Perform garden maintenance three (3) times per week on a year round basis or more as needed.

(x) Check and clear drains and perform post-storm cleanup in the bioretention area, and replace components or systems as necessary.

**(d) Repairs.** Repairs for which Licensee shall be responsible shall include, but not be limited to the following:

(i) **Benches or Other Seating.** Licensee shall replace any broken or missing bench slats and paint benches, as needed.

(ii) **Walls, Barriers and/or Fencing.** Any broken or cracked walls, barriers and/or fencing shall be repaired and/or replaced by Licensee where feasible and where minor repairs are required. To the extent feasible, repair and replacement materials and designs shall match the materials and designs of existing walls, barriers and/or fencing.

(iii) **Pavements.** All paved surfaces and walkways on the Licensed Premises shall be maintained in a safe and attractive condition. To the extent feasible, repair and replacement materials shall match existing materials.

(iv) **Signs.** All graphics shall be maintained in a clean condition, and all vandalized or damaged signs shall be promptly cleaned or replaced with new signs that match other installed signs.



(v) **Facilities.** All buildings, structures, storage containers, facilities and Equipment on the Licensed Premises, shall be maintained in good condition and good working order at all times.

(vi) **Painting.** All items with painted surfaces shall be painted as needed in a timely manner. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(vii) Any work performed by Licensee on the Licensed Premises, other than maintenance or repair work, shall require a Parks construction and/or forestry permit.

(e) **Docks.** The Docks shall be accessible, pursuant to Section 5.3(a)(ii) below, from dawn to dusk each day during Boating Season, subject to Force Majeure and other hazardous, weather-related events, for pre-scheduled programs supervised by Licensee and for HPW Permit Holders. Licensee may employ a Dock Access System, subject to Parks prior written approval for use by HPW Permit Holders and Row NY to unlock the Dock Gate and access the Docks outside of Row NY's program hours. Responsibility for the Docks is as follows:

(i) Licensee shall monitor, secure and perform required maintenance, repairs and replacement of all Licensee-installed property and equipment, including but not limited to the Docks, Dock Gate, and Dock Access System, located on the Licensed Premises.

(ii) Licensee shall perform routine inspections and safety checks of all equipment and Docks within the Licensed Premises and report all hazardous and dangerous conditions to Parks.

(iii) Licensee shall maintain a supply of spare safety rings and promptly replace missing life rings as required.

(iv) Unless otherwise directed by Parks, Licensee shall be responsible for safety signage throughout the Licensed Premises.

(f) If City property is damaged or destroyed due to the actions of Licensee, the Licensee shall repair, restore, or replace the City property to the reasonable satisfaction of the Commissioner.

(g) Licensee shall provide pest control services to keep the Licensed Premises in a clean and safe condition. Pest control methods chosen by Licensee shall be subject to Parks' reasonable approval and methods acceptable to the DEC before implementation. To the extent Licensee applies pesticides to the Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of Administrative Code of City of New York and limit the environmental impact of its pesticide use.

(h) Should the Commissioner reasonably decide that Licensee is not maintaining or causing to be maintained the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve or correct such conditions. If Licensee fails to comply with such written notice or respond in a manner satisfactory to Commissioner within thirty (30) days

from the mailing of said notice, notwithstanding any other provisions in this Agreement, then Commissioner may terminate this License Agreement.

**5.3 Operations.** Licensee, at its sole cost and expense (or through arrangements with third parties), shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction including, but not limited to, any necessary licenses, permits and approvals from the New York City Department of Buildings (“DOB”), Parks Capital Division, the New York City Department of Health and Human Services (“DOHMH”), the New York City Fire Department (“FDNY”), Department of Environmental Protection (“DEP”), and the New York State Department of Environmental Conservation (“DEC”). The Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any and all required licenses or permits.

**(a) Hours of Operation.**

(i) The Licensed Premises adjacent to the Building (but excluding the Building and the Docks) shall be open to the public during the hours that Sherman Creek Park is open to the public.

(ii) The Dock Gate shall be open to allow HPW Permit Holders access to the Docks during the hours that Sherman Creek Park is open to the public during Boating Season. Otherwise, the Dock Gate shall be locked; provided, however, during the Boating Season, Licensee shall ensure that HPW Permit Holders have access to the Docks either by a dock attendant or the Dock Access System.

(iii) Public Boat Storage, as defined in Section 5.4(b), shall be open to HPW Permit Holders during the hours that Sherman Creek Park is open to the public during Boating Season.

(iv) The Building shall be operational in accordance with Licensee’s approved programming, as initially set forth on **Exhibits B and C**. Licensee shall provide Parks with a monthly schedule of the Building Hours, which shall be updated from time to time when changes are made (either through e-mail or first-class mail). All changes to the Building Hours are subject to the reasonable approval of Parks.

(v) Licensee shall be responsible for opening and closing the Building for Building Hours. Licensee shall be responsible for locking and unlocking the entrance to the Building and shall provide Parks with a key to such lock.

(vi) Licensee shall have the right to close the Building on New Year’s Day, Martin Luther King, Jr. Day, President’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, day after Thanksgiving, Christmas Eve, Christmas and New Year’s Eve.

**(b)** Licensee shall immediately notify Parks’ Central Communications Unit (888-NYPARKS) of any unusual conditions that may develop in the course of the operation of this

License of which Licensee becomes aware such as, but not limited to injury, death, property damage, theft, fire, flood, casualty, and substantial damage of any character.

(c) Licensee shall prepare and provide to Parks reports of major accidents or unusual incidents occurring at the Licensed Premises in a format reasonably acceptable to the Commissioner. Licensee shall immediately notify Parks, in writing, of any claim for injury, death, property damage, or theft, which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a 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.

(d) **Hazardous Conditions and Emergency Operations.** Licensee shall periodically inspect the Licensed Premises and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, the erection of warning signs and temporary barriers. Necessary repairs to remedy such unsafe or emergency condition shall be made by the Licensee or Parks, as the case may be, in accordance with the allocation of responsibility for repairs set forth in Articles 5 and 8.25. Should Commissioner, in Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, Licensee, after receipt of written notification of such facts from Commissioner, shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area.

(i) In an emergency, Licensee may close the Premises in whole or in part without prior notice, and in this event, Licensee shall make commercially reasonable efforts to secure the prompt reopening of the Premises and other areas affected areas. Licensee shall notify the Commissioner as soon as practicable of the nature of the emergency and the actions taken by the Licensee to remedy the problem and reopen the Licensed Premises.

(ii) In the absence of an event of emergency, Licensee may, upon prior written approval of Parks close the Licensed Premises in whole or in part including other areas of the Licensed Premises, as is necessary for maintenance, repair, renovation or the discharge of the Licensee's responsibilities under this Agreement.

(e) Licensee, at its sole cost and expense, shall provide for and secure all service and maintenance agreements with licensed contractors necessary for the operation of the Licensed Premises. Such agreements shall include, to the extent necessary for the operation of the Licensed Premises, but not be limited to:

- (i) Security alarm
- (ii) Fire alarm system, including fire extinguishers
- (iii) HVAC system
- (iv) Docks inspection and repair

- (v) Elevator inspection and repair
- (vi) Landscaping services
- (vii) Fixed Equipment (except the light poles, which an affiliate of Parks will maintain)

(f) Licensee shall provide for inspections and certifications as required by all City, State and federal regulations in connection with Licensee's use and occupancy of the Licensed Premises, including but not limited to certifications from the New York City Department of Buildings, the New York City Department of Health and the Fire Department of New York City.

#### **5.4 Dock Operations**

(a) Licensee shall comply with Parks' Rules at the Licensed Premises with respect to its employees and participants in its Free Rowing Programs and Fee-Based Rowing Programs. Licensee will provide such security at the Licensed Premises that Licensee deems necessary for the safety of its Free Rowing Programs, Fee-Based Rowing Programs, and employees.

(b) Row NY shall design, construct and maintain, at its sole cost and expense, a free-standing storage rack for public storage of HPW (the "Public Boat Storage"). The Public Boat Storage shall have space for approximately twelve (12) HPW and be located on the north side of the Licensed Premises as depicted on **Exhibit A**. Parks and HPW Permit Holders shall have the right to bring their HPW onto the Licensed Premises, but HPW Permit Holders will not be permitted to store their HPW anywhere on the Licensed Premises except the Public Boat Storage. Parks shall be solely responsible for managing the use of the Public Boat Storage, including, but not limited to, implementing a reservation system and removing unauthorized HPW. Row NY shall have no responsibilities with respect to the Public Boat Storage, once constructed, except to maintain it in good working order.

(c) Licensee shall be entitled to the exclusive use of the Docks for its Free Rowing Programs and Fee-Based Rowing Programs during Licensee's rowing practices when Licensee's boats and rowing shells (including motorized boats used by Licensee in connection with its rowing programs) are moved into and out of the waterway from the Docks and across the Building Apron. However, in order to maximize the public nature of the parkland, the Docks will be available to the HPW Permit Holders as set forth in Section 5.3(a)(ii) above, with the exception of the start and end of Licensee's rowing practices when Licensee's boats and rowing shells are moved into and out of the waterway from the Docks and across the Building Apron. In addition, to facilitate load in and load out of Licensee's boats and rowing shells at the beginning and end of its rowing practice, and to limit potential conflict with members of the public, the Licensee may use a temporary barricade for the area between the Docks and Building during its rowing practice.

(d) Licensee shall design and install the Dock Gate and the Dock Access System subject to Parks' reasonable approval. Subject to Parks' reasonable approval, Licensee shall be solely responsible for developing any related procedures required to allow HPW Permit Holders to request and gain access to the Docks in a timely manner in accordance with Section 5.3(a)(ii) above.

(e) Licensee shall report any unsafe or illegal boating activity of which it becomes aware to Parks Chief Dockmaster as well as to New York City Police Department ("NYPD") Harbor Patrol and Coast Guard. During any period where the Commissioner reasonably 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 until such condition is corrected.

(f) At Parks' request, Licensee shall conduct a site inspection at the Licensed Premises with a Parks' representative. Such inspection shall assess the condition of the Licensed Premises and all equipment therein, and determine the nature and extent of repairs to be performed by Licensee as required by this License Agreement during the forthcoming Operating Year.

(g) Licensee may access the Licensed Premises from portions of Marginal Way and the ADA Path in connection with repairs to and maintenance of the Building. Licensee is responsible for coordinating, with reasonable cooperation from Parks, such access with New York Restoration Project ("NYRP") and applying for a construction permit from Parks in the event that such use requires a construction permit, which construction permit shall not be unreasonably withheld by Parks.

(h) Parks hereby approves the vessels listed in **Exhibit N** of this Agreement to be docked at the Premises. Parks reserves the right to approve in writing any vessel docked at the Premises that is not listed in **Exhibit N** attached hereto. All vessels docked at the Licensed Premises must have current registration and insurance that is reasonable and appropriate for such vessels, and must submit proof of such registration and insurance to Parks upon request.

(i) Licensee shall ensure safe boating and marina practices at the Licensed Premises and throughout the adjacent waters by any of Licensee's invitees, including but not limited to boaters' adherence to no-wake zones, monitoring that boaters maintain safe speeds when entering and leaving the Licensed Premises, and enforcing the non-discharge of vessel waste and litter into waters within or adjacent to the Licensed Premises. Licensee shall post emergency procedures at the Licensed Premises in an area accessible to all boaters. These procedures must include relevant emergency response numbers, including those of the United States Coast Guard, NYPD Harbor Patrol, FDNY, Parks' Central Communications, and DEC Emergency Spills Hotline.

(j) Licensee shall comply with all DEC's and other regulatory requirements related to boatyard operations and vessel maintenance. This includes containment and prevention of all antifouling paints and paint chips as well as any other pesticides from entering any waters. Licensee shall provide Parks with a detailed plan, as set forth in **Exhibit F** hereto and made a part of this Agreement, for clean boatyard practices and emergency spill response. Plans should include use of tarps and containment booms, berming, or covering of all drains near work areas, and other related maintenance and emergency response procedures.

(k) Licensee shall communicate with the general public, and respond to inquiries, comments or complaints in regard to programming, maintenance of the Licensed Premises, Special Events, and other matters.

**5.5** Under no circumstances may the Licensee sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, tobacco products, non-tobacco smoking products, or electronic cigarettes. No signs or any other kind of advertising for tobacco products, non-tobacco smoking products, or electronic cigarettes shall be permitted at the Licensed Premises. In connection with the Licensed Premises, the Licensee shall not accept sponsorships of any kind on behalf of any kind of tobacco products, non-tobacco smoking products, electronic cigarettes or alcohol.

(a) Smoking and the use of any tobacco products, non-tobacco smoking products, or electronic cigarettes in any building on the Licensed Premises is strictly prohibited.

(b) Additionally, Licensee shall not use in its operations any polystyrene packaging or food containers.

(c) All beverages shall be in non-glass, shatterproof containers.

(d) Licensee shall adhere to and enforce the prohibitions contained in this Section 5.5.

**5.6** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates that are required for the construction, occupation and lawful operation of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall also comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the maintenance and operation of the Licensed Premises. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits including any necessary Certificate(s) of Occupancy.

**5.7** Licensee shall record all transactions involved in the operation of this License and keep books and records as set forth in Article 16 herein and as the Commissioner deems acceptable. Licensee shall institute a revenue control system acceptable to the Commissioner.

**5.8** Licensee shall maintain close liaison with Parks, Park Enforcement Patrol and New York City Police Department ("NYPD"). Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use best efforts to prevent illegal activity on the Licensed Premises by notifying the NYPD and Parks.

**5.9** Licensee shall maintain an emergency plan, which shall be subject Parks' review and approval under consultation with the New York City Office of Emergency Management, for addressing coastal storms and hurricanes. Licensee shall adhere to all United States Coast Guard directives and restrictions during the term of this License Agreement, including but not limited to the implementation of any security measures, which may be necessary to meet the United States Coast Guard's three-tiered system of Maritime Security (MARSEC).

**5.10** At all times, Licensee shall make available to Parks, at Parks' request, its procedure manual for the Licensed Premises. The procedure manual, which is subject to Parks' prior written approval, shall include, but not be limited to the following areas:

(a) Boating Safety and Environmental Procedures

- (b) Fiscal Monitoring Procedures
- (c) Security Plan
- (d) Staffing Plan

**5.11** Licensee shall operate the driveway entrance and the parking facilities at the Licensed Premises.

**5.12** Licensee shall operate the Licensed Premises in accordance with all applicable FDNY Codes.

(a) Moorings, if any must be aligned to maintain navigational safety. Parks' Chief Dockmaster shall have the authority to inspect the Licensed Premises, including the Docks and pier structures, and to require changes to any mooring operations to address navigational safety. All such plans, including but not limited to, the number and organization of planned moorings must be presented to Parks for prior written approval, not to be unreasonably withheld.

(b) Vessels approaching, entering or leaving the Licensed Premises shall be operated according to navigational rules currently in effect. Such rules may be promulgated or modified from time to time by any Federal, State or local entity having jurisdiction.

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

**5.13** Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies the Licensee will be obligated to rectify in a timely fashion.

**5.14** Licensee shall maintain docks and pathways so as to minimize trip hazards.

**5.15** All Licensee vessels on land or water at the Licensed Premises must be in good operational condition.

**5.16** Licensee shall at its sole cost and expense promptly remove and dispose of sunken boats as well as abandoned, burned, or otherwise inoperable or derelict vessels to provide for safe navigation. Removal and disposal of any vessels must be performed through a licensed contractor or by Licensee with strict adherence to all Federal, State and City laws, safety and environmental guidelines.

**5.17** The rental or operation of jet skis or any other personal watercraft is not permitted.

**5.18** No person may establish the Licensed Premises, boat or vehicle, on grounds, moorings if any or piers, as a permanent residence.

**5.19** During the off-season and other periods when the Licensed Premises are not open, the Licensee will be required to lock the Building and secure the Docks by locking the Dock Gate.



## **ARTICLE 6 ALTERATIONS**

**6.1** Licensee shall make no Alterations to the Premises or other related areas herein without the Commissioner's prior written approval. Licensee may perform Alterations to Licensed Premises only in accordance with the requirements of this Article 6 and Article 8. Upon Parks' approval of any Alterations, Parks shall reasonably cooperate with Licensee to make such Alterations to any facilities installed by Licensee pursuant to this Article 6 or Article 8 during the Term. Upon Parks' approval of any Alterations, Parks shall give notice to Licensee whether such Alteration shall become property of the City upon such Alteration's substantial completion, provided, however, that if such Alteration is not constructed in accordance with the approved plans, then Parks shall, within thirty (30) days of Final Completion of the construction of such Alteration, give Licensee an updated notice as to whether such Alteration shall become property of the City.

**6.2** To alter the Licensed Premises, Licensee must:

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

(b) Ensure that work performed and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Section 6.2(a), in a good and workmanlike manner, and within a reasonable time.

(c) Notify the Commissioner of the completion of and the date of final payment for such Alteration(s) within ten (10) days after the later to occur of said completion or final payment.

(d) Licensee shall comply with existing City and Parks' procedures, as may be amended from time to time during the Term, for review of landscape redesign, renovation and rehabilitation projects in the Licensed Premises.

(e) All Alterations to the Licensed Premises undertaken by Licensee, its board members, officers, agents, employees, volunteers or contractors shall be at no cost to Parks (other than any agreed contribution from the City, and contributions from other public or private sector partners or donors) and such work shall not commence until the Licensee obtains prior written approval from (i) the Commissioner, or his designee and (ii) any City or other governmental authorizations and approvals that may be necessary.

(f) Licensee shall not install and/or maintain any temporary storage or other ancillary structures or staging areas without a Parks permit.

## **ARTICLE 7 ALTERATIONS BY PARKS**

**7.1** Parks may in its sole judgment, make additions, alterations, repairs, decorations, or improvements to the Licensed Premises at the City's expense, but, notwithstanding Section 5.2(e) of this Agreement, nothing herein contained shall be deemed to obligate or require Parks to make any additions, alterations, repairs, decorations or improvements, nor shall this provision in any way affect or impair Licensee's obligations in any respect. Parks will use reasonable efforts to



schedule any such Alteration, additions, decorations, repairs or improvements to be made by Parks at such times as will cause the least interference with Licensee's operation of programs.

**7.2** Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by the Commissioner, in the Commissioner's sole discretion, at the Licensed Premises at any time during the Term. Licensee agrees to cooperate with Parks to accommodate any such work 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 thirty (30) days written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner.

## **ARTICLE 8 CAPITAL IMPROVEMENTS**

**8.1** The City has final authority over all capital projects and programs undertaken at the Licensed Premises, and the Licensee has final authority over deciding the capital projects and programs for which it will raise money from private donors and/or expend its own funds.

**8.2** The Capital Improvements as defined in Section 3.1(i) herein shall include, but are not limited to, the items listed in the Schedule of Capital Improvements described in **Exhibit D**. Licensee shall perform and complete all such Capital Improvements at its sole cost and expense in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the Commissioner's express written consent, which shall not be unreasonably withheld, delayed or denied. At Parks' option, all Additional Fixed Equipment installed during the construction of the Capital Improvements required in this Article 8 shall become Parks' property upon installation

**8.3** Licensee must comply with the ADA and provide ADA accessibility throughout the Licensed Premises, including but not limited to the Building and/or doors, egresses, ramps, counters and restrooms as required by all City, State and Federal codes and regulations. Licensee is encouraged to exceed accessibility requirements at the Docks.

**8.4** To ensure faithful completion of any construction, reconstruction, renovation, or Alteration of the Licensed Premises with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall procure a performance bond from its contractor(s) in the amount of one hundred percent (100%) of the cost of such construction, reconstruction, renovation or Alteration of the Licensed Premises in a form acceptable to Parks before commencing such work. In the event Licensee undertakes such construction, reconstruction, renovation, or Alteration exceeding two hundred fifty thousand dollars (\$250,000) without a contractor, Licensee shall provide such performance bond.

**(a)** To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the

cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Article 8.4 (a): (i) Licensee guarantees payment in accordance with the provisions of **Exhibit O**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

(b) As applicable, the Commissioner shall determine the total cost of the Capital Improvements based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Licensee shall expend or cause to be expended during the Term of this License a minimum of Twenty Two Million Dollars (\$22,000,000.00) for Capital Improvements as defined in Section 3.1(i) herein. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit D** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In determining the total cost of Capital Improvements, the Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 8.2, including any amount needed above any estimated cost shown. In the event Licensee performs all Capital Improvements described in Section 8.2 for less than the estimated amount approved with the designs and plans by Parks, the Licensee may, subject to Parks’ prior written approval, which shall not be unreasonably withheld, complete additional Capital Improvements, to expend any excess monies. The Licensee will propose such additional Capital Improvements to Parks prior to the commencement of the same. Parks’ consent to the additional Capital Improvements proposed by the Licensee shall not be unreasonably withheld, delayed or denied. In the event, after acting in good faith, the Licensee and Parks cannot reasonably agree on additional Capital Improvements, the Commissioner may waive the requirement to expend the total cost of the Capital Improvements in his or her reasonable discretion following the Final Completion.

**8.5** Licensee shall pay all applicable fees and shall submit for prior written approval to Parks, the New York City Department of Buildings (“DOB”), the New York City Public Design Commission (“PDC”) and all other agencies having jurisdiction, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a Registered Architect or Licensed Professional Engineer, who will oversee the entire construction project. Licensee shall submit the architect’s and/or engineer’s qualifications to Parks for prior written approval. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail, as Parks shall require. All necessary permits and approvals for capital work must be obtained from Parks Capital Division. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed until

the Commissioner certifies in writing that the Capital Improvement has been completed to his satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably withheld, delayed or denied.

**8.6** At Parks' request, upon Parks' certification of Final Completion by Licensee of the Capital Improvements required herein, Licensee shall provide Parks with one complete set of final, approved "AS-DESIGNED" plans in a format acceptable to Parks. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED" drawings submitted must be so labeled. Each drawing shall contain the name, address & telephone number of the Architect /Engineer and the Contractor. Each drawing shall also include the Parks property number, Block and Lot numbers for the Parks facility in which the work was performed, to the extent such information is available, and if applicable, the DOB approval/application number.

**8.7** Licensee shall, before commencing any Capital Improvements under this License apply for applicable licenses from the Parks' construction permit office located in the Olmsted Center, Flushing Meadows Corona Park, Flushing, NY. Licensee shall commence Capital Improvements only after the issuance of a Parks' construction license. All necessary licenses, permits and approvals for capital work and designs and outdoor signage must also be obtained from the following agencies (to the extent each has jurisdiction): New York City Department of Buildings ("DOB"); Parks Capital Division; PDC; and the New York City Landmarks Preservation Commission ("Landmarks"). Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee shall notify Commissioner of the specific date on which construction shall begin.

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

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

**8.10** Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and

methods constitute or create a hazard to the Capital Improvements or to persons, property, or will not produce finished Capital Improvements.

**8.11** No temporary storage or other ancillary structures and staging areas may be erected and maintained without Parks' prior written approval. Parks has no objection to the continued use of the existing storage facilities at the Licensed Premises.

**8.12** Licensee is prohibited from cutting down or removing any trees on the Licenses Premises without Parks' prior written approval. Any attachments to the trees, shrubs or plants, such as lights, will not be permitted at any time without Parks' prior written approval.

**8.13** Licensee, at its sole cost, shall have an asbestos inspection performed on all structures at the Licensed Premises to the extent required by the DOB or other applicable authority, before the commencement of construction and/or renovation. In the event asbestos removal is necessary, Licensee shall cause the asbestos to be removed, at its sole cost, in accordance with City, state, and federal regulations.

**8.14** Licensee shall perform all work in a manner, which minimizes adverse impacts to wetlands, wildlife, water quality and natural resources. Licensee shall also use, whenever available, environmentally friendly construction materials.

**8.15** During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

**8.16** Licensee shall provide written notice to Commissioner when the Capital Improvements are substantially completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection, at Commissioner's option, Commissioner and Licensee shall jointly develop a single final "punch list" of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all "punch list" items within a reasonable time as the Commissioner determines.

**8.17** Licensee, within three (3) months of substantial completion, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

**8.18** Licensee shall provide Parks with discharges for any and all liens, which may be filed or levied against the Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty (30) business days of receipt of lien by Licensee.

**8.19** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 8.19 shall constitute a default and may result in the termination of this License.

**8.20** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**, subject to timely receipt of approvals by Parks, the Commission or any other authority necessary for the completion of such Capital Improvements. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In such situations, the Licensee shall propose for the Commissioner's approval a revised completion schedule and if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule.

**8.21** In the event of any delay by Parks or any City, state, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. Licensee's failure to comply with any phase of the schedules for Capital Improvements for a period of sixty (60) days following written notice shall constitute a default upon which Commissioner may terminate this License by giving thirty (30) days written notice.

**8.22** Neither Parks, nor the City, nor the agencies, officers, agents, employees or assigns thereof shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 8.22 signed by the Commissioner or his authorized representative.

**8.23** Upon Parks' approval of any Capital Improvements, Parks shall give notice to Licensee whether such Capital Improvement shall become property of the City upon such Capital Improvement's substantial completion, provided, however, that if such Capital Improvement is not constructed in accordance with the approved plans, then Parks shall, within thirty (30) days of Final Completion of the construction of such Capital Improvement, give Licensee an updated notice as to whether such Capital Improvement shall become property of the City. To the extent the City chooses in accordance with this Section 8.23 not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the



Licensee within the Removal Period. However, Licensee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows, and/or ventilation fixtures. Notwithstanding anything to the contrary in this Agreement, the Building shall become the property of the City upon substantial completion of the Building in accordance with the plans submitted by Row NY and approved by Parks, and at such time, the building shall be deemed a part of the Licensed Premises.

#### **8.24 Donor Recognition Features.**

The parties agree that Licensee may install Donor Recognition featuring a plaque and signage with “Mothers' Boathouse in honor of Ronnie Ackman, Mary Cashin, and Carol Winklevoss” engraved on it in a location reasonably agreeable to Licensee, Licensee’s donors making the donations associated with such Donor Recognition, and Licensors. The Public Design Commission must also approve any such signage. Such signage and messaging and the naming shall last for the Term of the License (as defined in Article 4.1), during which Licensee, including its successors and assigns as approved by Licensors pursuant to Article 33, has a license to use, occupy, maintain and/or operate the Licensed Premises. Ronnie Ackman, Mary Cashin, and Carol Winklevoss are herein defined as the “Named Individuals.” If a Named Individual is removed from the Naming Rights as provided in Article 8.25, following, Licensors may also direct Licensee to remove such Named Individual from the Donor Recognition features containing the name of such Named Individual. Any expense or cost for such removal referenced in the preceding sentence, will be the sole responsibility of Licensee. If, after the Term, Licensee (including its successors and assigns) is granted a subsequent license or other rights to use, occupy, maintain and/or operate the Building in a material manner, the parties identified in the first paragraph of this Agreement shall use their best efforts to ensure continuation of the Donor Recognition under identical terms as provided in Articles 8.24 and 8.25 for the duration of such subsequent licenses or other rights. For purposes of Articles 8.24 and 8.25, a subsequent license or other rights to use, occupy, maintain and/or operate the Building shall not be considered to be “material” if such license or other rights is for less than 51% use of the Building or is for a period of less than 30 days unless such limited and/or short term use or uses is immediately followed by a material use. For purposes of Articles 8.24 and 8.25, “best efforts” of the City of New York and the New York City Department of Parks & Recreation shall mean such parties acting in good faith and to the full extent of one’s own capabilities; provided, that “best efforts” shall not require either party to exceed what is allowed by law.

(a) Licensee may propose other Donor Recognition agreements with respect to the Licensed Premises, for Licensors’ approval. All forms of Donor Recognition for the Licensed Premises are subject to the prior written approval of Licensors including approval over the size, quantity, and location of such Donor Recognition or other forms of recognition, and subject to applicable laws, rules, and regulations. All revenues from such additional Donor Recognition at the Licensed Premises shall be restricted for the operation, and maintenance and programming of the Licensed Premises and accounted for separately and apart from all other funds, as set forth in Article 15 (Revenues & Accounts), unless an alternative arrangement, is approved by Licensors (in consultation of the City’s Office of Management and Budget (“OMB”)) and documented in a separate agreement between Licensors and Licensee, and provided further, (x) it is understood and agreed that the parties are aligned in their mutual desire to allow Licensee to use Donor Recognition revenues for capital projects at the Licensed Premises, to the extent such use is acceptable to OMB, and (y) to the extent Licensee desires to use such Donor Recognition revenues

for a capital project at the Licensed Premises, Licensee and Licensor shall work together in good faith to try to obtain all necessary approvals for such use of such revenues (including, but not limited to, the approval of OMB therefore). Licensee must account for any funds from such agreements pursuant to Article 15 of this License.

## **8.25 Naming Rights**

(a) The parties agree that Licensee may call the Building “Mothers' Boathouse in honor of Ronnie Ackman, Mary Cashin, and Carol Winklevoss” for the Term of this License (as defined in Article 4.1), during which Licensee, including its successors and assigns as approved by Licensor pursuant to Article 33, has a license to use, occupy, maintain and/or operate the License Premises (the “Naming Rights”). Ronnie Ackman, Mary Cashin, and Carol Winklevoss are herein defined as the “Named Individuals.” The Parties agree that during the Term, Parks shall not place another name on the Building other than “Mothers' Boathouse in honor of Ronnie Ackman, Mary Cashin, and Carol Winklevoss”. During the Term, Parks will use reasonable efforts to refer to the Building as “Mothers' Boathouse in honor of Ronnie Ackman, Mary Cashin and Carol Winklevoss” on the Parks website and in public statements. If, after the Term, Licensee (including its successors and assigns) is granted a subsequent license or other rights to use, occupy, maintain and/or operate the Building in a material manner, the parties identified in the first paragraph of this Agreement shall use their best efforts to ensure continuation of the Naming Rights under identical terms as provided in Articles 8.24 and 8.25 herein for the duration of such subsequent licenses or other rights.

(b) Parks may require the termination of the Naming Rights and/or Donor Recognition by giving at least 30 days' prior written notice to Licensee, which identifies a non-arbitrary or capricious reason, solely relating to the conduct of the Named Individual whose name is proposed to be removed, as the basis for termination or suspension of the Naming Rights and/or Donor Recognition regarding such Named Individual; provided the removal of such individual's name from the Naming Rights shall not affect the Naming Rights and/or Donor Recognition of the remaining Named Individuals (i.e. if the name of one of the Named Individuals is removed, only that Named Individual's name shall be removed from the Naming Rights and/or Donor Recognition and the Building shall continue to be named after the remaining Named Individuals consistent with this License). Any cost or expense for such removal referenced in this paragraph, will be the sole responsibility of Licensee.

(c) Reasons for the removal of the name of a Named Individual from the Naming Rights and/or Donor Recognition that are not arbitrary or capricious shall solely include: (x) such individual engaging in conduct that in the reasonable opinion of Parks would cause a significant diminution in the reputation of Parks or would be substantially inconsistent with its objects or mission; or (y) such Named Individual being formally charged with any violation of law involving moral or ethical issues under any criminal statute the character of which would constitute “moral turpitude” as that term is understood by courts in the United States of America and which would materially adversely impact Parks' reputation, image, mission or integrity and such charge is not dismissed within one hundred eighty (180) days, provided that, in either case, if the Named Individual that was so charged is ultimately not found guilty in a court of law of any such violation or such charges are otherwise dropped or dismissed, the name of such Named Individual, if removed from the Naming Rights and/or Donor Recognition, shall be reinstated subject to clause

(x), preceding. Any cost or expense for such reinstated Naming Right and/or Donor Recognition referenced in this paragraph, will be the sole responsibility of Licensee.

(d) In the event that a Named Individual's name is removed from either the Naming Rights and/or Donor Recognition by Parks pursuant to this License, then such removing party shall work in good faith to permit the donor(s) associated with the removed Named Individual to replace the removed Named Individual's name with one of their grandmother's names with respect to the Naming Rights and/or Donor Recognition, whichever the case shall be, and such replacement shall not be unreasonably denied except on account of such grandmother's conduct that Parks and Licensee reasonably hold to be objectionable; provided that the donors associated with the other Named Individuals whose names are not removed may, in their sole and absolute discretion, reject the alternate name. Any cost or expense for such replacement Naming Rights and/or Donor Recognition referenced in this paragraph, will be the sole responsibility of Licensee.

**8.26** Subject to the terms of Section 5.2(e), Licensee shall be required to make any structural or major repairs to the Licensed Premises, perform Capital Improvements or replace any sidewalks, roadways (including paving or repaving), buildings, improvements, Equipment, systems or facilities utilized therein, including, but not limited to, docks and pilings or repairing any of the utility facilities.

(a) Licensee shall repair any areas of the interior or exterior of the Premises, which are damaged by Licensee, or participants of Licensee's programs or Licensee's employees and volunteers. All such damage shall be promptly reported to Parks and before commencing repairs.

(b) Subject to the terms of Section 5.2(e), neither Parks nor the City shall be obligated to perform or fund any repairs or alterations to the Premises. This section shall not relieve Licensee of any obligations to perform repairs or alterations to the Premises to comply with the provisions of this Agreement.

(c) Subject to the terms, of Section 5.2(c), Licensee shall not prune, cut down, replant or remove any trees from the Premises, nor undertake any planting or landscaping without Parks' prior written approval.

(d) Subject to the terms of Section 5.2(g), Licensee shall conduct regular pest control inspections and extermination as needed. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

**8.27** Parks agrees to negotiate with NYRP to allow Row NY to use a portion of the premises at Sherman Creek Park licensed to NYRP (the "NYRP Licensed Premises") for staging construction of the Building and the ADA Path. Parks agrees to negotiate expeditiously and in good faith with NYRP to amend Parks' license agreement with NYRP as necessary to provide for temporary use by Row NY of a portion of the NYRP Licensed Premises that is adequate in size for all construction staging necessary to construct the Building and the ADA Path. Parks agrees to review expeditiously and in good faith all requests from Row NY for any construction or other permits



necessary for the construction of the Building and ADA Path and that no such permits shall be unreasonably withheld, conditioned or delayed. Row NY shall use reasonable efforts to minimize disruption of NYRP's maintenance, operations, and programming at NYRP Licensed Premises.

**8.28** Licensee shall design, construct and fund the ADA Path. Upon completion of construction of the ADA Path, which is expected within twenty-four (24) months after the commencement of Capital Improvements, Licensee shall not be responsible for repairs and/or maintenance of the ADA Path.

## **ARTICLE 9 USE OF CITY RESOURCES**

**9.1 Employees.** Subject to applicable laws, rules, regulations, and contractual provisions and subject to the Commissioner's sole discretion nothing contained in this Agreement shall preclude City employees assigned to the Licensed Premises from performing services required to be performed under this Agreement by the Licensee.

### **9.2 Equipment and Property.**

**(a)** Licensee shall, to the reasonable satisfaction of the Commissioner and either at its sole cost and expense or through any sublicensee, provide and replace, if necessary, all equipment and materials necessary for the successful operation of this License. Licensee shall, and shall cause any sublicensee to, put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises (except the light poles, which an affiliate of Parks will maintain).

**(b)** Subject to the terms of Section 5.2, Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises (except the light poles, which an affiliate of Parks will maintain) and for keeping such Fixed and Additional Fixed Equipment (except the light poles) in good operating condition, normal wear and tear excepted.

**(c)** In accordance with Section 6.1 and Section 8.23 of this Agreement, the City retains title to all Fixed Equipment on the Licensed Premises as of the Commencement Date. As set forth in Section 6.1 and Section 8.23, at the time the City approves the plans and specifications for any Additional Fixed Equipment, the City shall notify Licensee whether the City shall accept title to such Additional Fixed Equipment. If the City determines to accept title to such Additional Fixed Equipment, then title to such Additional Fixed Equipment shall vest in and belong to the City upon the substantial completion of the installation or affixing of such Additional Fixed Equipment. In accordance with Section 6.1 and Section 8.23 of this Agreement, if at the time the City approves the installation of Additional Fixed Equipment it determines not to accept title thereto, then Licensee shall be responsible to remove such Additional Fixed Equipment and restore the Licensed Premises to its condition prior to the installation of such Additional Fixed Equipment or otherwise to the satisfaction of Commissioner at the sole cost and expense of Licensee prior to the Removal Deadline.

**(d)** Licensee shall supply and replace, or cause any sublicensee to supply and replace, at its own cost and expense, all Expendable Equipment, materials and supplies required for the proper operation of this License.

**(e)** Licensee shall, and shall cause any sublicensee to, acquire, replace or repair, install or affix, at their sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein.

**(f)** Title to all Expendable Equipment obtained by Licensee or any sublicensee shall remain in Licensee or such sublicensee, as applicable, and such equipment shall be removed by Licensee at the termination or expiration of this License.

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

**(h)** The Expendable Equipment to be removed by Licensee shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Licensee shall remain liable to the City for any damage to the Licensed Premises caused by the removal of Expendable Equipment from the Licensed Premises.

**9.3** Licensee shall provide all equipment necessary to operate its programs.

## **ARTICLE 10 UTILITIES**

**10.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with the appropriate service providers. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state, or City agencies or entities as have jurisdiction over the operation of the Licensed Premises.

**10.2** Licensee shall, at its sole cost and expense, directly pay for all utility costs associated with the Licensee’s operations of the Licensed Premises, which shall include, but not be limited to electricity, water, sewer and gas. Licensee, at its sole cost and expense, shall install, operate and maintain any internet connections, computers and email accounts used by its employees at the Building. Licensee shall ensure that all utilities serving any sublicensees or sublicensed concessionaires shall be paid by the sublicensee, either through submetering or estimated usage.

**10.3** Licensee shall adhere to all New York City Department of Environmental Protection directives and restrictions regarding drought and water conservation issues during the Term.

## ARTICLE 11 USE OF PROPERTY AND TITLE TO IMPROVEMENTS

**11.1** It is understood and agreed that during the term Licensee shall have the non-exclusive use of the Premises, fixtures, furniture, landscaping and other improvements now or hereafter located within, installed on, or affixed to the Premises pursuant to the terms and conditions set out herein.

## ARTICLE 12 PERSONNEL

**12.1** All experts, independent contractors, consultants, specialists, trainees, servants, agents 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 included in this section or in any other provision of this License shall impose any liability or duty upon 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 or fees of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

**12.2** Director of Rowing Operations. During the Term, the Licensee will designate an employee ("the Manager") who will be charged with the duty to manage and administer the maintenance, operation and programming of the Licensed Premises and its staff. The Manager's duties and responsibilities are more specifically described in the job description attached in **Exhibit H**. The Manager will work closely with the Parks' District Manager to coordinate the smooth and efficient management of the maintenance and operation of the Licensed Premises. The Manager shall meet monthly with the Parks' Manhattan Borough Commissioner to establish objectives for the Licensed Premises and to administer and track the fulfillment of these objectives.

**12.3 Background Checks.** For purposes of this subparagraph, the word "personnel" means each employee and volunteers whose duties and responsibilities relate primarily to working with children or in close proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references and suitability for working with children. Licensee agrees to comply with all Parks' written guidelines and procedures concerning the screening and employment of personnel including:

- (a) Substantiating credentials;
- (b) Conducting criminal background checks, as outlined in the **Background Checks Rider**, annexed hereto as **Exhibit I**; and
- (c) Conducting reference checks;
- (d) Licensee agrees not to hire or retain any personnel who refuse to:
  - (i) Provide the names of references;
  - (ii) Provide documentation of credentials;

(iii) Provide other requested information, which may bear on the applicant's fitness to work with or in close proximity with children.

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

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

(ii) Who has been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or the subject of an ongoing investigation concerning a child abuse and maltreatment report on file with this Registry.

**12.4** As a Licensee of the City, Licensee must comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law attached in **Exhibit J**.

## **ARTICLE 13 PROGRAMMING & PERMITS**

### **13.1 Programming.**

(a) Licensee is solely responsible for the coordination of Licensee's public and/or private events.

(b) **Free Programming.** Subject to applicable laws, rules and regulations and the Commissioner's supervision and prior written approval, the Licensee, as part of its mission, during approved hours shall provide services and supervised recreational programs at the Licensed Premises to the general public free of charge, in areas such as rowing, education, athletics, and other areas as may be approved in writing by the Commissioner. These services or programs cannot be revenue generating but where appropriate, the Licensee may receive donations to offset the costs of such services and programming.

(i) Licensee shall provide for the benefit of the general public free of charge, the various programs set forth in **Exhibits B** and **C** during each operating year. Licensee is solely responsible for the coordination of Licensee's programming. Licensee shall offer no less than seventy percent (70%) of its year-round programs free of charge.

(c) **Fee-Based Programming.** Licensee may offer Fee-Based Rowing Programs approved by Parks to offset the cost of providing Free Rowing Programs. Licensee shall offer the Fee-Based Rowing Programs described in **Exhibits B** and **C** which Parks agrees are hereby approved.

(i) Licensee may, upon the Commissioner's written approval, amend the programs, previously approved schedule of programs and fees and may impose other reasonable fees which shall be consistent with the purposes of this Agreement.

(ii) Licensee may sublicense the fee-based adult rowing programs described in **Exhibits B and C**. Any sublicensee shall be subject to the Commissioner's prior written approval and subject to the terms and conditions of this Agreement.

(d) **Special Events.** All Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld. Licensee shall give the Commissioner at least thirty (30) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Special Event. Special Events may not restrict public access to the Licensed Premises, unless otherwise approved in accordance with this Section 13.1(d).

(e) Licensee's right to provide such services and programming and to retain revenue through fees and other charges as described herein shall be subject to all City authorization, approvals, permits and compliance with other processes, which may be necessary.

(f) Licensee must account for any funds from services and programming at the Licensed Premises under Article 15 (Revenue and Accounts) of this Agreement.

(g) All aspects of programming at the Licensed Premises must comply with Parks' Rules and Regulations, including, but not limited to obtaining ancillary permits where applicable. Licensee is responsible for securing all ancillary permits required by outside agency regulations, including but not be limited to NYPD Amplified Sound permits, Department of Buildings' ("DOB") structural or temporary place of assembly permits, Department of Health ("DOHMH") permits and Fire Department ("FDNY") permits.

(h) Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, Title 24, Chapter 2, and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

(i) Licensee shall be responsible for payment of all fees or royalties to ASCAP, BMI or such other entities as may be required for any music or music programming during its programming.

(j) Licensee shall provide all staff, furniture, equipment, materials and supplies necessary for the administration and operation of its programs and events at the Licensed Premises.

(k) **Fundraising.** Subject to the Commissioner's, or his/her designees' prior written approval, Licensee shall be permitted to use portions of the Licensed Premises for a maximum of four (4) fundraising events per year that are reasonably expected to attract more than twenty (20) attendees, or which will result in the closing of any portion of the Licensed Premises to the public during regular hours of operation. Such fundraising events will be limited to traditional fundraising functions, such as fundraising dinners, or fundraising cocktail parties. Licensee shall use its best efforts to provide Parks with no less than sixty (60) days (or such lesser period as may be acceptable to Parks) prior written notice of any such activities. Proceeds from

such fundraisers will be used solely to benefit the Licensed Premises, or such other uses as Parks may approve.

(i) Licensee must account for any funds from fundraising pursuant to Article 15 of this Agreement.

### **13.2 Permits – Licensee.**

(a) Subject to this Agreement, Licensee shall have the right to host its own Special Events, or contract with third parties to operate Special Events at the Licensed Premises in accordance with the terms of this License.

(b) Licensee or Licensee's sublicensee must obtain a Parks' permit for any:

(i) Special event or activity where attendance will be over twenty (20) people (except activities in accordance with Licensee's normal day-to-day programming set forth in **Exhibits B and C**); and

(ii) Special Events, including, without limitation, fundraising benefits, festivals, gala events and Special Events having program or event sponsor(s).

The Licensee shall use reasonable efforts to provide Parks with no less than thirty (30) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed event described in clauses (i) or (ii) above.

(c) Licensee shall use reasonable efforts to provide Parks with no less than sixty (60) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed services and programming where the Licensee derives and retains revenues through fees or other charges.

### **13.3 Permits – Parks.**

(a) In addition to the services and programming provided by or through the Licensee pursuant to this Agreement, Parks may provide permits for additional activities on the Licensed Premises, including other non-profits or public events ("Parks Special Events"). Parks expressly reserves the right to schedule and conduct Parks Special Events in consultation with Licensee, alone or in conjunction with co-sponsors, including but not limited to concerts, music festivals, exhibits, art programs, and other events open to the public.

(b) Parks shall use reasonable efforts to not interfere with the Licensee's programming on the Licensed Premises.

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

(d) The Mayor's Office of Media and Entertainment (MOME) may issue permits for filming on the Licensed Premises, as well as other commercial photography on the Licensed Premises. The terms of these permits shall be acceptable to Parks in consultation with Licensee.

(e) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event permit and such Special Event permit has been approved by Parks.

(f) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee for such maintenance and clean-up.

(g) In connection with any Parks' Special Events, Parks shall require third parties to deliver insurance certificates to Row NY in such coverages as required by Parks not less than fourteen (14) days prior to the event, which insurance certificates shall name the City, its officials and employees, and Row NY as additional insureds thereunder.

(h) Parks shall (i) be fully responsible for any damage caused during a Parks' Special Event to the Licensed Premises, Alterations, Capital Improvements, or any personal property of Licensee located at the Licensed Premises, and shall reimburse Licensee for any loss, damage or expense incurred by Licensee in connection with any such damage; and (ii) (and shall cause any permitted third-party to) hold harmless and indemnify Licensee and its officers, employees and agents from any claims, actions and judgments, including without limitation any and all claims for loss, damages, injury, including death, or property damage of whatever kind and nature, resulting or arising out of any negligent or willful acts of Parks or such permitted third-party, as applicable, at a Parks' Special Event.

## **ARTICLE 14 INTELLECTUAL PROPERTY**

**14.1** Except as set forth in Section 14.1(a) below, all intellectual property rights in the Licensed Premises, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Licensed Premises and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-profit activities, Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of the Licensed Premises. To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit the Licensed Premises. Upon Parks' request, Licensee shall provide Parks with an accounting



reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this Section 14.1. Nothing in this Section 14.1 prohibits Licensee, any sublicensee or any other person claiming by or through Licensee or any sublicensee from using the words “Sherman Creek”, “Manhattan Site”, “Community Boathouse” and “Community Boathouse and Learning Center” as part of the business address thereof or in the ordinary course of business thereof, and nothing in this Section 14.1 requires Licensee, any sublicensee or any other person claiming by or through Licensee or any sublicensee from obtaining permission from Parks to use the words “Sherman Creek” as provided in this sentence; provided, however, that Licensee, any approved sublicensee or any other person claiming by or through Licensee or any approved sublicensee specifically acknowledge that the Sherman Creek name or words as described in this Section 14.1 are included within the definition of City IP and no permitted use by Licensee, any approved sublicensee or any other person claiming by or through Licensee or any approved sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved sublicensee or any other person claiming by or through Licensee or any approved sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved sublicensee or any other person claiming by or through Licensee or any approved sublicensee shall immediately terminate when such person ceases to operate in the Licensed Premises.

**(a)** Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights (including naming rights granted to any of Licensee’s donors) that Licensee has or acquires that meet the following requirements (“Licensee Specific IP”) are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee (or granted to any of Licensee’s donors), any sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in Section 14.1 above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee’s activities, as shall Licensee’s ability to use any City IP that is incorporated into Licensee Specific IP with the City’s permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee’s activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

**(b)** All goodwill associated with the City IP or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names, and service names included in the City IP and Licensee Specific IP



have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner which could be inconsistent with or damaging to the owner's name and reputation. Either party shall have the right to terminate this Agreement, upon written notice, in the event that any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. In the event that any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, prior to exercising the right of termination provided for in this paragraph, shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

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

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

(iii) All provisions of this Article 14 will survive any expiration or termination of this License Agreement, except as otherwise set forth in this Article 14.

## **ARTICLE 15 REVENUES & ACCOUNTS**

**15.1** Licensee shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, at a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all Gross Receipts collected in connection with or resulting from the rights and privileges granted to Licensee hereunder, including any funds collected in connection with Fee-Based Rowing Programs, Fee-Based Programs such as those listed on **Exhibits B and C** and Special Events. Licensee may withdraw Gross Receipts from the Special Account to expend for ordinary and necessary expenses directly attributable to Licensee's operation of the Licensed Premises including programming expenses and operating, managing, maintaining, and repairing the Licensed Premises consistent with this Agreement. No withdrawals shall be made from the Special Account other than as provided for in this Agreement. Any Excess Revenues for any Fiscal Year and any disbursements therefrom shall be maintained by Licensee in the Special Account and any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the certification described in Section 16.1(c). The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Articles 16, 17, and 18 herein. Gross Receipts do not include funds collected or received by Licensee (such as grants, donations, bequests and contributions) other than in the course of Licensee's use or operation of the Licensed Premises. Licensee's use of such other revenues is governed by applicable law.

## ARTICLE 16 FINANCIAL RECORDS AND REPORTS

**16.1 (a)** On or before the one hundred twentieth (120th) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any Licensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Licensee's Gross Receipts shall survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

**(b)** On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement, from each sublicensee of such sublicensee's Gross Receipts, signed and verified by an officer of such sublicensee, reporting such sublicensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of sublicensee's Gross Receipts shall survive the termination of this License. Each such sublicensee or shall indicate on its statement of sublicensee's Gross Receipts whether or not such sublicensee's Gross Receipts are inclusive of sales tax collected. Notwithstanding anything to the contrary in the foregoing, the statement of Gross Receipt for any sublicensee may be for its fiscal or operating year rather than the Fiscal Year.

**(c)** Within one hundred twenty (120) days after the end of each Fiscal Year, Licensee shall submit detailed income and expense statements for itself for operating the Licensed Premises during the preceding Fiscal Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with this Section 16.1(c). Such report must contain a certification from Licensee's Chief Financial Officer certifying that all of Licensee's Gross Receipts, including any Excess Revenues, to the extent expended, were applied solely to pay Expenses, or remain available to pay for future Expenses.

**(d)** Pursuant to New York City Administrative Code Section 18-134, Licensee shall provide to Parks, in a form that complies with the report attached as **Exhibit K** to this License Agreement or other form acceptable to Parks, data concerning any funds that Licensee has expended at the Licensed Premises for the preceding period of July 1st to June 30th no later than October 31st each year. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

**(e)** Licensee is, and shall cause any sublicensee to be, solely responsible for the payment of all Federal, State and local taxes applicable to the operation of the Licensed Premises. With the exception of Federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

**16.2 Financial Statement.** Licensee shall furnish to the Commissioner a detailed financial statement audited in conformance with GAAP for each fiscal year during the Term including but not limited to the Licensee's 990 filings. Such statements shall include the salaries of all paid staff. Such statements shall, if they involve amounts over ten thousand dollars (\$10,000.00), be audited by an independent Certified Public Accountant retained at the cost and expense of the

Licensee. Such annual statement shall be submitted to the Commissioner no later than one hundred and eighty (180) days after the close of each year of the Term of this Agreement.

**16.3 Monthly Operations Report.** The Licensee shall furnish to Parks a monthly report to be submitted within fifteen (15) days of the previous months end. The report shall include, but not limited to, operations activities (repairs, maintenance, etc.), capital projects and alterations, upcoming public programs and events, future/ongoing initiatives, personnel, incidents/unusual activity, inquiries or publications from press and media, and other relevant information that should be reported to NYC Parks.

**16.4 LL28 Report.** Pursuant to the amendment to Local Law 28 of 2008 as codified in the City Administrative Code Title 18 Section 18-134, the Licensee shall provide to Parks, in a form acceptable to Parks, data concerning any funds that the Licensee has expended at the Premises for the preceding period of July 1<sup>st</sup> to June 30<sup>th</sup> no later than October 31<sup>st</sup> each year. All information furnished to Parks shall be accurate, and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by the Licensee at the Premises.

**16.5 Annual Operating Budget and Operating Plan.** Prior to the start of each fiscal year, Licensee will submit its park operations budget and capital budget, which shall include all costs associated with the maintenance and operations of the Licensed Premises, to the Commissioner for review and written approval. The Licensee shall set forth in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions, and communications, including salaries and benefits of any employee primarily engaged in those activities.

**16.6 Annual Meeting with NYC Parks.** Licensee and Parks shall conduct an annual budget and operations meetings prior to the start of Licensee's fiscal year to review the "Annual Operating Budget and Operating Plan".

**16.7 Board Meetings.** Licensee will provide notice to the Commissioner of all meetings, hearings and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this Agreement.

## **ARTICLE 17 RIGHT TO AUDIT**

**17.1** Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall, and shall cause any sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any sublicensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully with and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any sublicensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such sublicensee, as

applicable, must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location. 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, following any applicable notice and cure period, shall be a default hereunder which shall entitle Parks to terminate this License.

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

## **ARTICLE 18 RETENTION OF RECORDS**

**18.1** Licensee agrees to retain all books, records, and other documents relevant to each fiscal year covered by this Agreement for ten (10) years after the termination of this Agreement. City, State, and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice.

## **ARTICLE 19 PROHIBITIONS ON USE**

**19.1 Nuisance and Waste.** Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Premises.

**19.2 No Combustibles and Inflammables.** Except for properly stored fuels or other properly stored solvents used for repair of boats and/or other equipment necessary for the operation of the Licensed Premises for Licensee's approved programming Licensee shall not use or permit the storage of any illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, or other similar substances or explosives of any kind or any other substance or thing prohibited in the standard policies of fire insurance companies in the State of New York.

**19.3 Use.** Licensee shall not use or allow the Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in violation of any certificate of occupancy or the provisions on the use of the Premises herein.

## **ARTICLE 20 SECURITY**

**20.1** Licensee shall be responsible for providing or causing there to be provided appropriate security for any events or activities undertaken by Licensee pursuant to this License. Licensee, at its own expense may install locks, alarm systems and/or security cameras on the Licensed Premises and shall have use of any security implements currently in place at the Premises, provided that all keys and/or codes for such locks and systems are provided to Parks.

**20.2** Parks shall not be responsible for any loss or damage to any property of Licensee or any other person that is used or stored at the Licensed Premises.

**20.3** Licensee shall be responsible for securing all entrances and exits at times when the Licensed Premises is not open to the public.

## **ARTICLE 21 ACCESS AND INSPECTION AT THE PREMISES**

**21.1** The Commissioner or Commissioner's duly authorized representatives, the NYPD and any other City agency representatives shall have access for any lawful purpose to the Premises at all times. Representatives from Parks as well as other City or State or Federal governments shall have the right to enter and be present at the Premises to observe the Licensee's operations for any lawful purpose.

## **ARTICLE 22 SIGNAGE**

**22.1** All signage shall comply with Parks standard signage regulations as shown on **Exhibit G** attached hereto.

**22.2** The signage and locations thereof and any changes to the design and/or placement of all signage, including signage which includes Licensee's name, trade name(s) and/or logos, is subject to the Commissioner's prior written approval.

**22.3** Licensee shall display such signs as may be needed to guide and inform the public as to the name, location, purpose, hours of operation and related fees of the Licensed Premises. Without limiting the foregoing, Licensee shall display signs at the Licensed Premises indicating: (i) that access to the Docks is only available to Licensee and HPW Permit Holders; (ii) the scheduled hours of rowing practices; (iii) that the Docks will be open to the HPW Permit Holders for launching and removal of non-motorized boats from dawn to dusk during Boating Season, except when Licensee's boats and rowing shells are being loaded in and out at the beginning and end of rowing practices, (iv) instructions for HPW Permit Holders to request and gain access to the Docks outside of Building Hours using the Dock Access System, (v) that fishing is prohibited from the Docks; and (vi) that access to the Docks from the water is prohibited by anyone other than Licensee and HPW Permit Holders. Licensee shall maintain all such signs in good condition and repair and shall include the Parks' logo following the design guidelines set by Parks, unless Parks otherwise approves in writing, and may indicate that the Licensee in cooperation with Parks maintains the Licensed Premises through a License Agreement.

**22.4** Licensee shall, at its sole cost and expense post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons. Licensee shall obtain necessary approvals or permits from any governmental agency having jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Licensed Premises. The placement and design of all signage are subject to Parks' prior written approval, which shall not be unreasonably withheld.

**22.5** For those signs posted by Licensee, Licensee shall maintain all graphics in a first class condition, and promptly clean all vandalized or damaged signs or replace such vandalized or damaged signs with new signs that match other installed signs. An overall signage plan for the Licensed Premises is subject to the Commissioner or the Commissioner's designee's written

approval. Signage at entrances to the Licensed Premises will acknowledge Parks, and elsewhere where mutually agreed by the Licensee and the Commissioner.

**22.6** Licensee may, at its sole cost and expense, post throughout the Licensed Premises bulletin boards, which may display news, information regarding Licensee (including upcoming events, donor information and recognition, sponsorship opportunities and recognition) and the Licensed Premises (such as the history of the Licensed Premises).

**22.7** All signs shall comply with the Zoning Resolution and regulations of the Department of Buildings.

**22.8** Parks may post sign(s) on the Licensed Premises, which may include Parks' logo and indicate, among other things, that the site is under Parks' jurisdiction.

## **ARTICLE 23 ADVERTISING**

**23.1** To assure public awareness of the Premises and its programs, Licensee shall make commercially reasonable efforts to provide notice to the public about the opportunity to participate in the programs offered at the Premises which such efforts shall include, but not be limited to, advertising in local newspapers, and other community publications, posting posters, notifying neighborhood residents, public and private schools and community civic groups. Licensee shall obtain the Commissioner's approval, which shall not be unreasonably withheld, for any advertisement or promotional material concerning the Licensed Premises.

**23.2** If in the Commissioner's discretion any release, advertisement, or statement made to the public relating to programs and services offered at the Licensed Premises are incorrect or unacceptable for any reason, Licensee agrees to alter or cease such release, advertisement, or statement as directed by the Commissioner.

**23.3** Licensee is prohibited from displaying, placing or permitting commercial advertisements in the Licensed Premises.

**23.4** Under no circumstances shall Licensee be permitted to place advertisements on the exterior of its concession area or on any building or structure on the Licensed Premises without Parks' prior written approval. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from placing or permitting the placement of advertisements in the Licensed Premises without the prior written approval of Parks.

**23.5** The display or placement of advertising for tobacco products, non-tobacco smoking products, electronic cigarettes, or alcoholic beverages shall not be permitted. In the event advertising is allowed, the following standards will apply: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which in Parks' determination is otherwise unlawful or obscene, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Upon notice from Parks, Licensee shall immediately remove any such prohibited material displayed or placed. Any sign posted at the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the



Commissioner's approval, shall be appropriately located, and shall state that the Licensed Premises are a New York City Parks & Recreation concession operated by the Licensee. The placement, design, and contents of all signage are subject to Parks' prior written approval.

## **ARTICLE 24 WAIVER OF COMPENSATION**

**24.1** Licensee hereby expressly waives any and all claims for compensation from the Commissioner, his or her agents, and the City 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 except to the extent any of the foregoing arise from the gross negligence or willful misconduct of the City or any officer, official, employee or contractor thereof.

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

## **ARTICLE 25 INDEMNIFICATION**

### **25.1 Licensee's Responsibility.**

(a) The Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors 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 operations under this License.

(c) 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, except to the extent such injuries or damages are the result of the negligence or intentional tortious acts of any representative, employee or agent of the City.

(d) The Licensee shall use the Premises in compliance with, and shall not cause or knowingly permit the 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 Premises. Except as may be agreed by the City as part

of this License, Licensee shall not cause or knowingly 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 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.

## **25.2 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 Licensee itself has been negligent, except to the extent such claims are the result of the intentional tortious acts of the City, its officials, agents, employees or representatives) and/or the Licensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by 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 officers and employees to avail themselves of the benefits of such insurance.

## **ARTICLE 26 INSURANCE**

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

(a) From the date this Agreement is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article 26 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 Agreement only during the effective period of all required coverage.

(c) The Licensee's failure to maintain insurance in complete conformity with this Article 26, or to do anything else required by this Article 26 shall constitute a material breach of this Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

(d) If the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article 26 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, Department of Parks & Recreation, 830 Fifth Avenue, The Arsenal, Central Park, New York, New York 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 Article 26.

(e) Insurance coverage in the minimum amounts provided for in this Article 26 shall not relieve the Licensee of any liability under this Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this Agreement or the law.

## **26.2 Workers' Compensation Insurance, Employer's Liability Insurance, and Disability Benefits Insurance.**

(a) The Licensee shall maintain Workers' Compensation Insurance, Employer's Liability Insurance, and Disability Benefits Insurance in compliance with law.

(b) In accordance with Workers' Compensation Law sections 57 and 220(8), the Licensee shall provide proof of Workers' Compensation insurance and Disability Benefits insurance on forms approved by the New York State Workers' Compensation Board.

(i) For Workers' Compensation insurance, acceptable forms are C-105.2 (Certificate of Workers' Compensation Insurance), U-26.3 (NYS Insurance Fund Certificate of Workers' Compensation Insurance), SI-12 (Certificate of Workers' Compensation Self Insurance), or CE-200 (Certificate of Attestation of Exemption).

(ii) For Disability Benefits insurance, acceptable forms are DB-120.1 (Certificate of Disability Benefits Insurance), DB-155 (Certificate of Disability Benefits Self-Insurance), or CE-200 (Certificate of Attestation of Exemption)

(iii) ACORD Forms are not acceptable proof of Workers' Compensation insurance and Disability Benefits insurance.

## **26.3 Commercial General Liability Insurance and Commercial Automobile Liability Insurance**

### **(a) Commercial General Liability Insurance.**

(i) The Licensee shall maintain Commercial General Liability insurance in the amount of at least \$1,000,000 per occurrence for bodily injury (including death) and property damage, \$1,000,000 for personal and advertising injury, \$5,000,000 in the aggregate on a per location basis, and \$2,000,000 for products/completed operations. Coverage shall be at least as broad as that provided by the most recent edition of Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than those included in ISO Form CG 00 01, as required by law, those exclusions in existence on Licensee's current Commercial General Liability policy as of the date of this Agreement, and as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(ii) The 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 Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and 20 37.

(iii) In the event that Licensee wishes to use the Licensed Premises for any activity listed in the exclusions to its Commercial General Liability insurance policy or any other event for which coverage is not provided in Licensee's Commercial General Liability insurance policy, Licensee is obligated to purchase a standalone Commercial General Liability policy which shall be approved by the City in writing prior to any such use of the Licensed Premises.

(iv) Either through policy language in or an endorsement to Licensee's CGL policy, or through a standalone policy with policy limits greater than or equal to the policy limits required for CGL, Licensee shall provide liability coverage protecting Licensee from claims arising from or related to the use of watercraft of all types in connection with this License. If provided through a standalone policy, such policy shall provide the City, including its officials and employees with additional insured coverage at least as great as that provide by the latest version of ISO form CG 20 26.

**(b) Commercial Automobile Liability Insurance.**

(i) With regard to all operations under this Agreement, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least \$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 most recent edition of ISO Form CA 00 01.

(ii) 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.

**(c) Hazardous Materials and Pollution Liability Insurance**

(i) In the event the Licensee enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Licensee shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, cleanup costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises.

(ii) If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000), and provide coverage for the Licensee as Named Insured or Additional Insured and the City, together with its officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall

have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

**(d) General Requirements.**

(i) The Commercial General Liability and Commercial Automobile insurance coverage must:

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

(B) be primary and non-contributing to any insurance or self-insurance maintained by the City.

(C) not include a self-insured retention that exceeds \$10,000 unless approved in writing by the Commissioner.

(ii) The Licensee shall require any contractors performing construction work in connection with this Agreement to maintain insurance that meets the requirements of this Section 26.3, and the Commercial General Liability insurance shall cover the City, including its officials and employees, with coverage at least as broad as that required by ISO Forms CG 20 26 and CG 20 37.

**(e) Proof of Insurance.**

(i) Prior to execution of this Agreement, the Licensee must submit the following proof of Commercial General Liability and Commercial Automobile insurance, either:

(A) A certificate of insurance, the required additional insured endorsements for the Commercial General Liability Insurance policy, and a completed "Certification by Insurance Broker or Agent" in the form attached as **Exhibit L**; or

(B) A copy of the Commercial General Liability Insurance and Commercial Automobile Insurance policies as certified by an authorized representative of the issuing insurance carrier.

(ii) Proof confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this Agreement. Such proof shall conform to (i)(A) or (B), above.

(iii) Acceptance or approval by the Commissioner of proof of insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Section 26.3 is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

(iv) The Licensee shall be obligated to provide the City with a copy of the Commercial General Liability insurance and/or the Commercial Automobile Liability insurance policies upon request by the Commissioner or the New York City Law Department.

**(f) Property Insurance**

(i) The Licensee shall maintain comprehensive, broad-form property insurance (such as an "All Risk" policy) covering all buildings, structures, equipment and fixtures on the Premises ("License Structures"), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the License Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind and subsidence. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(ii) This Section does not require coverage for damage caused by flooding.

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

(iv) In the event of any loss to any of the License 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 License 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.

**(g) Flood Insurance.**

(i) The Licensee shall maintain flood insurance for each building on the Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the National Flood Insurance Program (NFIP) for both the building and its contents. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

(ii) 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.

**(h) Miscellaneous.**

(i) The Licensee may satisfy its insurance obligations under this Section 26.3 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(ii) The City's limits of coverage for all types of insurance required under this Section 26.3 shall be the greater of (i) the minimum limits set forth in this Section 26.3 or (ii) the limits provided to the Licensee under all primary, excess and umbrella policies covering operations under this Agreement.

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

(iv) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section 26.3, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this Agreement (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) in the time required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information to the extent known: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. 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.

(v) 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 26.3, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(vi) The Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered by Commercial General Liability insurance (whether or not such insurance is actually maintained or claims are paid thereunder) or other insurance applicable to the operations of the Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(vii) If the Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this Agreement 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. For Commercial General Liability insurance, such coverage must be at least as broad as the most recent version of ISO form CG 20 26.

(viii) Licensee shall cause its construction-related contractors (including architecture and engineering contractors) performing work in connection with the Licensed Premises to maintain appropriate insurance and shall require such contractors to defend and indemnify the City, including its officials and employees, for claims arising out of such contractors' operations. Licensee's contract(s) with such contractor(s) shall be subject to Parks' prior written approval in accordance with Sections 6.2(a) and 6.2(b) hereof.

(ix) Licensee shall name the New York Restoration Project ("NYRP") as an additional insured in those instances where construction or staging will be occurring on NYRP licensed premises or adjacent thereto.

(x) Licensee shall name NYRP as an additional insured in those instances where access to NYRP property is required in connection with an RNY Special Event.

## **ARTICLE 27 REPRESENTATIONS, WARRANTIES, AND COVENANTS**

**27.1** Licensee shall use all revenues derived from the Licensee's operations at the Licensed Premises to cover Licensee's costs and/or expenses of maintaining, operating, improving or providing programming at the Premises.

**27.2** Licensee makes the following representations and warranties:

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

(b) This Agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding and enforceable obligation of Licensee.

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

(d) 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.

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

**27.3** Licensee covenants and agrees that it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its status pursuant to Section 501(c) (7) of the Internal Revenue Code of 1986, as amended.

**27.4** Licensee shall maintain provisions in its By-Laws providing for the appointment of the Commissioner or his authorized designee to the Board as ex-officio members.

**27.5** Licensee represents that they are an organizational member of USRowing, the national governing body of the sport of rowing, and is in compliance with all operational requirements of being a USRowing member. This includes, but is not limited to: Level 1 or higher USRowing certified coaches, a commitment to continuing coaching education and professional development, and meeting or exceeding the minimum safety standards of USRowing. Additionally, Licensee has its own, site specific safety rules and procedures that all staff adheres to. All staff and volunteers shall go through bi-annual safety training and shall be CPR/First Aid/AED certified.

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

## **ARTICLE 28 COMPLIANCE WITH LAWS, RULES AND REGULATIONS**

**28.1** Licensee shall faithfully perform and carry out the requirements of this License 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. This provision includes, but is not limited to, the Parks' Rules and Regulations in 56 RCNY §1-01 et seq., New York City Administrative Code §18-137, the New York State Not-for-Profit Corporation Law,



applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

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

**28.3** Licensee is solely responsible for and shall at its own cost and expense obtain all governmental approvals, permits, and licenses required by Federal, State and City laws, regulations, rules and orders to use, operate and maintain the Premises in accordance with the terms herein.

**28.4** To the extent Licensee applies pesticides to the Premises, Licensee or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code.

**28.5** Licensee shall comply with all City, State and Federal laws relating to access for persons with disabilities. Licensee shall comply with all City, State and Federal requirements to provide safe and accessible opportunities for everyone, including persons with disabilities. Licensee shall meet and exceed the minimum accessibility requirements whenever possible. Such accessibility shall be clearly indicated by signs and included in all of Licensee's advertising at the Licensed Premises. Licensee shall include in its advertising and promotion program, described in Article 23 above, a plan, which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

## **ARTICLE 29 INVESTIGATIONS**

**29.1** 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.

(a) 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

(i) If any person refuses to testify for a reason other than the assertion of a privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance



under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

(A) The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 29.1(c) below without the City incurring any penalty or damages for delay or otherwise.

**(b)** The penalties, which may attach after the Commissioner or Agency Head's final determination may include but shall not exceed:

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

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

**(c)** The Commissioner or Agency Head shall consider and address in reaching a determination and in assessing an appropriate penalty the factors in Section 29.1(c)(i) and (ii) below. The Commissioner or Agency Head may also consider, if relevant and appropriate, the criteria established in Sections 29.1(c)(iii) and (iv) below in addition to any other information that may be relevant and appropriate.

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of 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 Section 29.1(b) 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 Section 29.1(a)(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.

(d) 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.

(i) 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.

(ii) 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.

(iii) 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.

(e) In addition to and notwithstanding any other provision of this License the Commissioner or Agency Head may in the Commissioner’s sole discretion terminate this Agreement upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the City of New York’s Commissioner of Investigation of 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 License Agreement by the Licensee, or affecting the performance or this License Agreement.

## **ARTICLE 30 NOTICE**

**30.1** Licensee shall prepare and provide to Parks operational status reports as reasonably requested by the Commissioner. In addition, Licensee shall immediately, or within twenty-four (24) hours of occurrence or notice thereof, report major and/or unusual incidents in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft, which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of the Licensed Premises. The name and address of the designated person shall be provided to Parks in writing.

**30.2** Licensee shall promptly notify Parks of any unusual conditions that may develop in the course of the operation of the Licensed Premises, including, but not limited to, fire, flood, casualty and substantial damage of any character. Licensee shall also notify Parks to the extent it is aware of any such unusual conditions.

**30.3** Where provision is made herein for notice to be given in writing, the same shall either be given by (a) mailing a copy of such notice by registered or certified mail, return receipt requested, or nationally recognized overnight courier service addressed to the address herein provided or to such other address as shall be filed with both Commissioner and Licensee or (b) facsimile transmission or (c) hand delivering a copy of said notice to the President of Licensee or to the Commissioner at the addresses provided below:

If notice must be given to the City or Parks, notice should be addressed to:

Susan M. Donoghue  
Commissioner  
The Arsenal - Central Park  
830 Fifth Avenue  
New York, NY 10065

With a copy to:

Alessandro G. Olivieri, General Counsel  
New York City Department of Parks & Recreation  
The Arsenal – Central Park  
830 Fifth Avenue, Rm. 313  
New York, NY 10065

If notice must be given to Licensee, notice should be addressed to:

Rachel Cytron  
Executive Director  
Row New York, Inc.  
163 Amsterdam Avenue, Suite 1108  
New York, NY 10023

Notices shall be deemed given (a) upon delivery, when delivered by hand, (b), one (1) business day after being given to an overnight courier with a system for tracking delivery, (c) upon delivery of a confirmed facsimile, or (d) five (5) business days after the day of the mailing, when mailed by United States mail postage prepaid. Failure to accept delivery of any such notice shall constitute delivery for purposes hereof.

## **ARTICLE 31 INTENTIONALLY OMITTED.**

### **ARTICLE 32 NO DISCRIMINATION**

**32.1** Pursuant to applicable Federal, State and City laws, Licensee shall not unlawfully discriminate against any employee, applicant for employment with respect to all employment decisions, or anyone desiring to attend or participate in activities or programs because of race, creed, religion color, national origin, age, sex, disability (mental and physical), marital status, or sexual orientation. Licensee shall comply with the ADA and regulations pertaining thereto as applicable. Any violation of this Section 32.1 shall be a material breach of this License.

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

### **ARTICLE 33 NO ASSIGNMENT**

**33.1** Licensee shall not sell, assign, mortgage or otherwise transfer any interest provided for herein, or consent, allow or permit any other person or party to use any part of the Premises, except as provided herein or approved in writing by the Commissioner, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this License and privilege solely to Licensee.

### **ARTICLE 34 WAIVER OF TRIAL BY JURY**

**34.1** Licensee hereby expressly waives all rights to trial by jury in any summary proceeding hereafter instituted by the City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License or the use and occupation of the Licensed Premises or any matter whatsoever in any way connected with this License, including but not limited to, the relationship between the City or Licensee. The provision relating to waiver of jury trial shall survive the expiration or termination of this License or any renewals thereof.

(a) 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 City are adverse parties, Licensee and the City shall reasonably cooperate with each other without additional compensation to the extent that either party may reasonably require of the other.

### **ARTICLE 35 CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

**35.2** Any and all claims asserted by or against the City (which for purposes of this Article 35 includes the Commissioner) or Licensee 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, the parties agree:

(a) If any such action or proceeding is brought in Federal Court or in New York State Court, service of process may be made on the City or Licensee, as the case may be, by personal service in accordance with the provisions of the New York Civil Practice Law and Rules (“CPLR”), wherever such party may be found (and if the City is the party being served, process shall be served on the Corporation Counsel, 100 Church Street, New York, New York 10007); provided, however, that in so far as service is to be made upon the Licensee, as an alternative to personal service in accordance with the provisions of the CPLR, service of process upon Licensee may be made in such other manner and at such other address for Licensee in each case only as Licensee may provide in writing to the City; and

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

**35.3** With respect to any action arising under this License or related thereto between the City and the Licensee in Federal Court located in New York City, the parties expressly waive and relinquish any right they might otherwise have to move to transfer the action to a United States Court outside the City of New York.

**35.4** If either party commences any action against another party arising under this License or related thereto in a Court located other than in the City and State of New York, upon the receiving party’s request, the commencing party 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 commencing party shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

## **ARTICLE 36 CLAIMS AND ACTIONS THEREON**

**36.1** No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected with this License unless 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.

**36.2** No action shall lie or be maintained against the City hereto 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.

**36.3** In the event any claim is made or any action brought in any way relating to the License 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 may require of Licensee.

## **ARTICLE 37 CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **ARTICLE 38 INDEPENDENT STATUS OF LICENSEE**

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

## **ARTICLE 39 CUMULATIVE REMEDIES - NO WAIVER**

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

## **ARTICLE 40 ALL LEGAL PROVISIONS DEEMED INCLUDED**

**40.1** It is the intent and understanding of the parties to this Agreement that each and every provision of law required to be inserted in the Agreement shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this Agreement 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.

## **ARTICLE 41 SEVERABILITY- INVALIDITY OF PARTICULAR PROVISIONS**

**41.1** 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.

## **ARTICLE 42 JUDICIAL INTERPRETATION**

**42.1** 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 License and that legal counsel was consulted by each responsible party before the execution of this License.

#### **ARTICLE 43 MISCELLANEOUS**

**43.1** The article, headings, and Table of Contents contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

#### **ARTICLE 44 MERGER AND MODIFICATION**

**44.1** This License constitutes the entire agreement between the parties and cannot be amended, modified or terminated orally, but only by an instrument in writing executed by Commissioner and Licensee. No amendment or modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

#### **ARTICLE 45 COUNTERPARTS**

**45.1** This License may be executed in PDF counterparts, each of which shall constitute an original and all of which PDF counterparts taken together shall constitute one and the same License.

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

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

**ROW NEW YORK, INC.**

By: \_\_\_\_\_  
Susan M. Donoghue  
Commissioner

By: \_\_\_\_\_  
Rachel Cytron  
Executive Director

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

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

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

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

\_\_\_\_\_  
Date

COUNTY OF NEW YORK )

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally came Susan M. Donoghue to me known, and known to me to be the Commissioner for the New York City Department of Parks & Recreation, and the said person described in and who executed the foregoing instrument, and he acknowledged that he executed the same in his official capacity and for the purpose mentioned therein.

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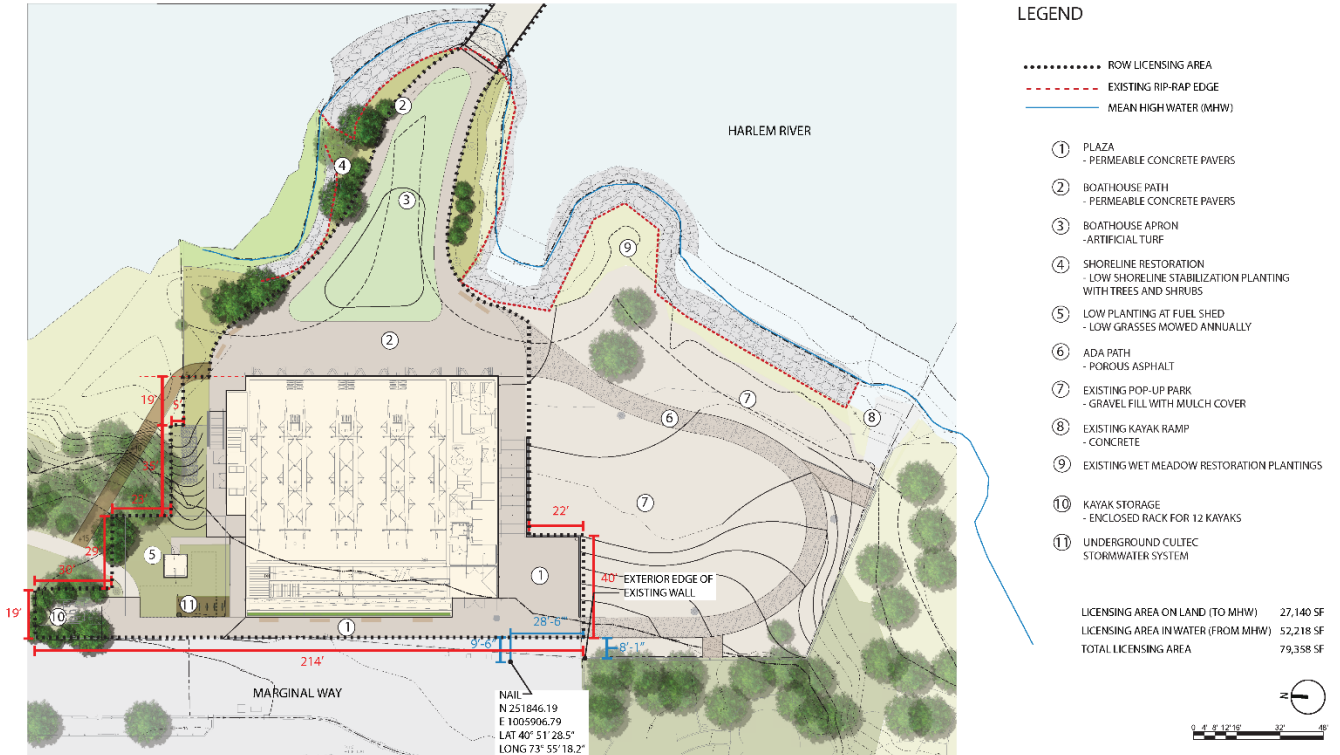
Notary Public

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

On this \_\_\_\_ day of \_\_\_\_\_, 2022, before me personally came Rachel Cytron who being duly sworn by me did depose and say that she is the Executive Director of Row New York, Inc. and that she executed the foregoing instrument in his official capacity and for the purposes mentioned therein.

Notary Public

## LICENSED PREMISES



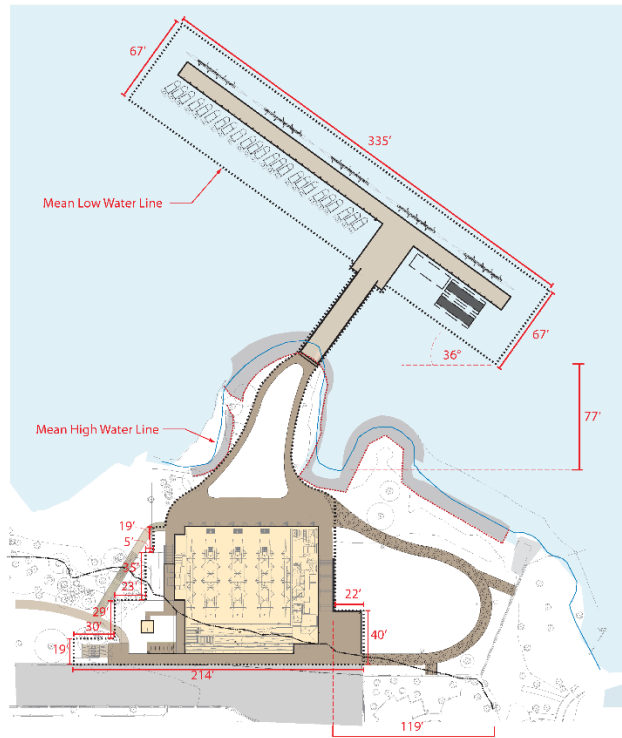
**MNLA**  
Landscape



Sherman Creek Community Boathouse  
April 27, 2022

Site Plan  
Scale: 1/32" = 1'-0"

Site Plan  
Licensed Premises

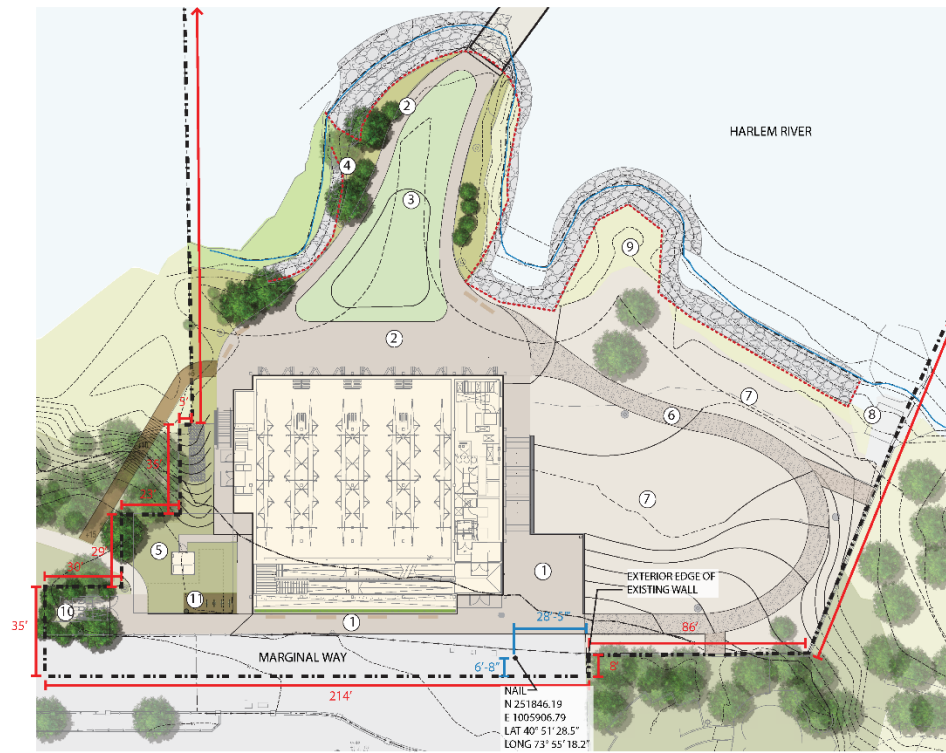


#### LEGEND - SHELL CIRCULATION

- ..... ROW LICENSING AREA
- - - - - EXISTING RIP-RAP EDGE
- MEAN HIGH WATER (MHW)

LICENSING AREA ON LAND (TO MHW)	27,140 SF
LICENSING AREA IN WATER (FROM MHW)	52,218 SF
TOTAL LICENSING AREA	79,358 SF





# LEGEND

- LIMIT OF WORK
- - - EXISTING RIP-RAP EDGE
- MEAN HIGH WATER
- ① PLAZA  
- PERMEABLE CONCRETE PAVERS
- ② BOATHOUSE PATH  
- PERMEABLE CONCRETE PAVERS
- ③ BOATHOUSE APRON  
- ARTIFICIAL TURF
- ④ SHORELINE RESTORATION  
- LOW SHORELINE STABILIZATION PLANTING WITH TREES AND SHRUBS
- ⑤ LOW PLANTING AT FUEL SHED  
- LOW GRASSES MOWED ANNUALLY
- ⑥ ADA PATH  
- POROUS ASPHALT
- ⑦ EXISTING POP-UP PARK  
- GRAVEL FILL WITH MULCH COVER
- ⑧ EXISTING KAYAK RAMP  
- CONCRETE
- ⑨ EXISTING WET MEADOW RESTORATION PLANTINGS
- ⑩ KAYAK STORAGE  
- ENCLOSED RACK FOR 12 KAYAKS
- ⑪ UNDERGROUND CULTEC STORMWATER SYSTEM

MNLA  
Landscape



Sherman Creek Community Boathouse  
April 27, 2022

Site Plan  
Scale: 1/32" = 1'-0"

Site Plan  
Limit of Work

## **EXHIBIT B**

### **APPROVED PROGRAMMING**

#### **REQUIRED ON-SITE PROGRAMMING**

<b>Program</b>	<b>Days/week</b>	<b>Weeks/year</b>	<b>Estimated Number of Annual Participants</b>
Core rowing and academic program (middle- and high-schoolers)*	6	46	100-400

#### **AUTHORIZED ON-SITE PROGRAMMING**

Row New York is authorized but not required to run the following programs on site. While Row New York intends to run the below programs, the ability to do so is contingent on funding, partnerships, and interest.

<b>Program</b>	<b>Days/week</b>	<b>Weeks/year</b>	<b>Estimated Number of Annual Participants</b>
Indoor Fitness†	5	40	240 - 450
District 75 School day adaptive*	5	10-12	120
Veterans Rowing*	3	30	45
Masters Rowing	6	46	100-200
Adult Learn to Row	1	8	150-800
Scholastic Rowing	4	13	120-180
Community Learn-to-Row†	1	4	400
Other Adaptive Programs <sup>1</sup>	2	12	120

\* Denotes programs that are free of charge (or 70% of participants for core program)

† Denotes programs that are free or low-cost for community participants based on income (or 70% of participants for core program)

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<sup>1</sup> Adaptive Programs are programs in which people with physical or cognitive disabilities are participating.

## EXHIBIT C

### SCHEDULE OF APPROVED PROGRAM RATES AND FEES

<b>PROGRAMS</b>	<b>FEES</b>
<b>Youth Programs:</b> Includes five days a week of rowing, swim lessons, uniforms, race expenses, coaching, SAT prep, Regents prep, basic skills assessment and support, tutoring, and college application assistance:	
<b>In households earning under \$100K/ year</b> All levels	Free
<b>In households earning above \$100K/year</b> Middle school: Novice: Varsity:	\$2,000 – \$3,000 /year \$4,000 – \$5,000/year \$4,500 – \$5,500/year
<b>In households earning above \$200K/year</b> Middle School: Novice: Varsity:	\$2,500 – \$4,000/year \$4,750 – \$6,250/year \$5,500 – \$7,000/year
<b>Adult class fees:</b> Learn to Row: Masters:	\$299-\$399/person for 8 lesson pack \$199-\$299/season
<b>Adaptive Programs:</b> District 75 School Day adaptive Other adaptive programs: sliding scale based on income	Free \$0-\$1,000/person/season
<b>Other Programs:</b>	
(i) Learn to Row summer campers	\$500 – \$1,000/person
(ii) Competitive summer campers	\$700 – \$1,500/person
(iii) Scholastic rowing league (turnkey program for private school rowing leagues, which are scheduled to not conflict with core rowing programs)	\$1,000 – \$2,000/person
(iv) Organizational team building rowing sessions	\$50 – \$250/person



PROGRAMS	FEES
<b>Revenue Generating Activities:</b>	
(i) Row New York athletic equipment	To be determined in concert with Parks
Other Revenue Generating Allowances: (ii) Space rental for classroom subject to Parks approval: (a) Local nonprofit, during regular hours (b) Local nonprofit, after regular hours (c) For-profit organizations	To be determined in concert with Parks
(iii) Space rental for multipurpose room subject to Parks approval: (a) Local nonprofit, during regular hours (b) Local nonprofit, after regular hours (c) For-profit organizations	To be determined in concert with Parks
(iv) Boat and space, shells and other equipment rental: (a) Local nonprofit, during regular hours (b) Local nonprofit, after regular hours (c) For-profit organizations	To be determined in concert with Parks
(v) Instructional lessons provided by subcontractors	To be determined in concert with Parks

## **EXHIBIT D**

### **SCHEDULE OF CAPITAL IMPROVEMENTS**

1. Construction of Docks
2. Construction of a Building to be used as a Boathouse
3. Construction of an ADA Path to waterfront
4. Construction and installation of a Building Apron, including paving and landscaping
5. Installation of Light poles

**EXHIBIT E-1**

**PIP MANUAL**

[ATTACHED]

**EXHIBIT E-2**  
**RECAP MANUAL**

[ATTACHED]

**EXHIBIT F**

**CLEAN BOATYARD PRACTICES AND EMERGENCY RESPONSE PLAN**

[ATTACHED]

**EXHIBIT G**

**PARKS STANDARD SIGNAGE REGULATIONS**

[ATTACHED]

## **EXHIBIT H**

### **DIRECTOR OF ROWING OPERATIONS DUTIES**



**Job Title:** Director of Rowing Operations

**Job Type:** Full-Time, Salaried

#### **Position Summary:**

This role oversees the boathouse operations to support excellent, safe programs at all of Row NY's boathouses and in-school programming. The Director of Rowing Operations will work with the facilities team to execute strategic plans, maintain equipment and facilities, and oversee all program safety at Row NY. In the business development aspects of the role, the Director will focus on and be responsible for both building and maintaining external relationships and critical internal collaboration. The Director will work with partner schools and other organizations as needed, while collaborating internally with the Director of Youth Rowing to plan and execute programs, as well as with the Marketing and Communications team to ensure proper positioning and branding.

#### **Key Responsibilities:**

- Liaise with Row NY senior management, board members, Parks, and external stakeholders concerning boathouse planning, building, and strategic plans for all sites, lending on the ground expertise to decision-making.
- Identify and assess any and all maintenance, repair and upkeep needs of boathouses and other facilities, and serve as the key contact for architects, contractors, attorneys, and engineers for repairs and planning.
- In conjunction with the relevant program Directors, develop long term equipment plans for all Row New York locations that meet program needs and support future growth.
- Develop strategic partnerships with vendors, exploring exclusive sourcing from targeted companies.
- Supervise and lead the facilities team, ensuring positive and productive working relationships with Program Managers and that site-specific needs and requirements are met. Oversee development of equipment and program schedules for all sites so that all programs (youth, scholastic rowing league, adaptive, etc.) have the equipment needed to effectively and safely run practice. Ensure that communication pathways for addressing equipment issues are clear and understood by all coaches.



- Maintain appropriate registration, inspection, and upkeep for Row New York vehicles.
- Ensure regular service repairs for engines, launches, rowing shells, barges, oars, and ergs across all locations and programs.
- Oversee all safety and equipment training and certification requirements and ensure compliance.
- Monitor digital equipment inventory; manage capital equipment sales and purchases in part by meeting regularly with the Director of Youth Rowing, Director of Community Rowing, and Director of Finance.
- Support Program Managers with “boathouse day” activities including managing winterizing schedules and related projects.
- With the facilities team, prepare locations and ready all necessary equipment for Row New York events held at boathouses as well as at other locations

## **EXHIBIT I**

### **BACKGROUND CHECKS RIDER**

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

2. Convictions, Non-Pending Arrests and Criminal Accusations, and Pending Arrests: Licensee shall comply with Subdivisions 15 and 16 of Section 296 the New York Executive Law, Article 23-A of the New York Correction Law, and Subdivisions 11 and 11-a of the Admin Code. Such laws pertain to unlawful discriminatory employment practices in connection with individuals with convictions, non-pending arrests or criminal accusations, and/or pending arrests.

3. Review of Decision: Where practicable, Licensee shall provide for the review by a supervisor employed by Licensee of a decision not to hire based on convictions, non-pending arrests or criminal accusations, and/or pending arrests.

4. Consultation with the Department: Licensee may consult with the Department regarding the application of this section.

## **EXHIBIT J**

### **PAID SICK LEAVE LAW**

#### **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

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

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

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

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

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

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

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

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

### Exemptions and Exceptions

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

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLI are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLI for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is 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 PSL. 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 PSL 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 PSL.

### Enforcement and Penalties

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

**EXHIBIT K**

**FORM OF REPORT UNDER NEW YORK CITY ADMINISTRATIVE CODE**  
**SECTION 18-134**

<b>Local Law 28 of 2008 Partnership Reporting Form</b>						
<b>Reporting Period: July 1 - June 30</b> <b>Fiscal Year: 20[●]</b>						
<b>Partner</b>	<b>Park Location</b>	<b>Borough</b>	<b>Fiscal Year-end</b>	<b>Total Spending – Maintenance and Operations</b>	<b>Total Spending – Programming</b>	<b>Total Spending – Capital</b>
Row NY	Sherman Creek	Manhattan	30-Jun			



**EXHIBIT L**

**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.

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[Name of broker or agent (typewritten)]

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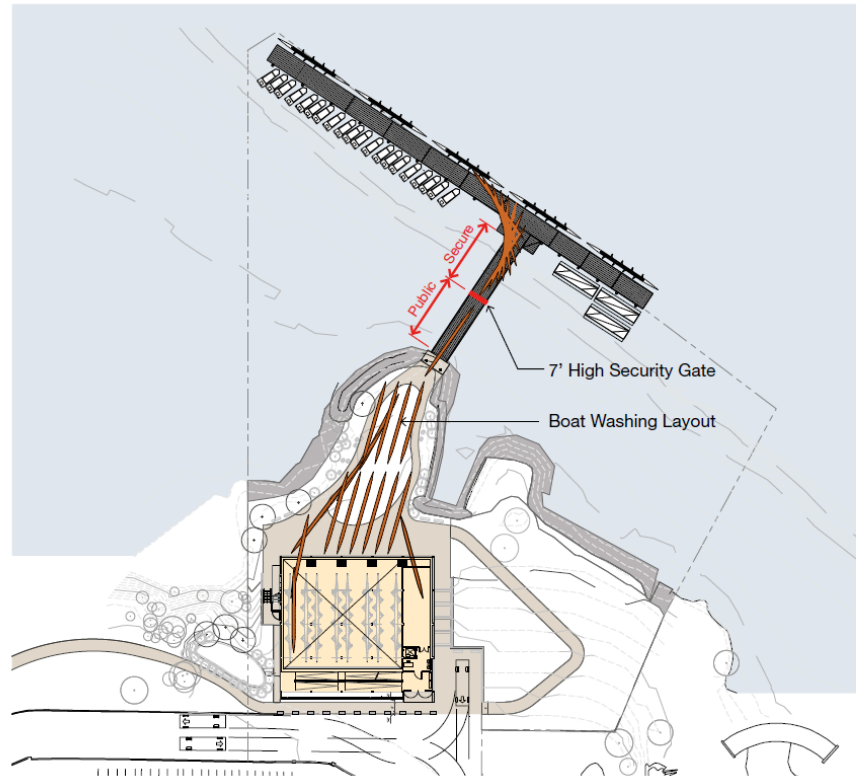
[Address of broker or agent (typewritten)]

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State of .....)  
County of .....)

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

**EXHIBIT M**  
**DIAGRAM OF DOCKS**



## **EXHIBIT N**

### **LIST OF APPROVED VESSELS FOR DOCKING**

1. Four (4) Still Water Rowing Barges
2. Thirty (30) 16-foot Aluminum Safety Launches
3. One (1) 16-foot Fiberglass Safety Launch
4. Marine Police and or Coast Guard Emergency Response Vessels (as necessary)

## **EXHIBIT O**

### **Payment Guarantee Requirements**

**I.** (A) For purposes of this **Exhibit O**:

(1) “Contractor” means a person, firm or corporation who or which contracts with the Licensee to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to the Licensee in connection with the work for the Capital Improvement Project. The Contractor may also be referred to in this **Exhibit O** as a “party liable for payment” where applicable;

(2) “Licensee” shall have the meaning given such term in the License Agreement. The Licensee may also be referred to in this **Exhibit O** as a party liable for payment where applicable; and

(3) “Subcontractor” means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to a Contractor in connection with the work for the Capital Improvement Project. The Subcontractor may also be referred to in this **Exhibit O** as a “party liable for payment” where applicable.

(B) Licensee shall, in accordance with the terms of this **Exhibit O**, guarantee payment of all lawful claims for :

(1) Wages and compensation for labor performed and/or services rendered ; and

(2) Materials, equipment, and supplies provided, whether incorporated into the Capital Improvement Project or not, when demands have been filed with the Licensee as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Capital Improvement Project (hereinafter referred to as a "beneficiary") performed at the direction of the Licensee, the Contractor, or a Subcontractor of the Contractor; and

**II.** The provisions of Section I.(B) of this **Exhibit O** are subject to the limitations and conditions in this Section II and in Sections III and IV of this **Exhibit O**:

(A) The guarantee is made for the benefit of all beneficiaries as defined in Section I.(B) of this **Exhibit O**, provided that those beneficiaries strictly adhere to the terms and conditions of this Section II of this **Exhibit O**.

(B) Nothing in this **Exhibit O** shall prevent a beneficiary providing labor, services or material for the Capital Improvement Project from suing the person, firm or corporation for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

(C) Every person who has furnished labor or material, to the Licensee, a Contractor or to a Subcontractor of the Contractor, in the prosecution of the Capital Improvement Project and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action, by filing a demand hereunder; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.

(D) No action on this payment guarantee shall be commenced after the expiration of two (2) years after the completion of the Capital Improvement Project.

(E) A Contractor shall promptly forward to the Licensee any notice or demand received pursuant to Section II (C) of this **Exhibit O**. The Contractor shall inform the Licensee of any defenses to the notice or demand and shall forward to the Licensee any documents the Licensee requests concerning the notice or demand. If the Contractor has a claim against the Licensee as described in the first sentence of Section II.(C) of this **Exhibit O**, the Contractor shall promptly forward such demand to the Licensee.

(F) All demands made against the Licensee by a beneficiary of this payment guarantee shall be presented to the Licensee along with all written documentation concerning the demand which the Licensee deems reasonably appropriate or necessary, which may include, but shall not be limited to: the contract or subcontract; any invoices presented to the party liable for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the party liable for payment and that the demand has not been paid by the party liable for payment within the time allowed for such payment by the contract or subcontract; and copies of any correspondence between the beneficiary and the party liable for payment concerning such demand. If the party liable for payment is not the Licensee, the Licensee shall notify the party liable for payment that a demand has been made. The party liable for payment shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

(G) The Licensee shall make payment as described in Section IV only if, after considering

all defenses presented to the claim for payment, it determines that (i) the payment is due and owing to the beneficiary making the demand, and (ii) such payment is due and owing in respect of a Guaranteed Claim.

(H) No beneficiary shall be entitled to interest from the Licensee, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by applicable law.

**III.** Upon the receipt by the Licensee of a demand pursuant to this **Exhibit O**, in the case where the Licensee is not the party liable for payment, the Licensee may withhold from any payment otherwise due and owing to the Contractor an amount sufficient to satisfy the demand.

**IV.** (A) In the event the Licensee determines that the demand is valid and the Licensee is not the party liable for payment, the Licensee shall notify the party liable for payment of such determination and the amount thereof, and direct the party liable for payment to immediately pay such amount to the beneficiary. In the event the party liable for payment, within seven (7) days of receipt of such notification from the Licensee, fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee becomes aware of such failure to pay the beneficiary.

(B) In the event the Licensee determines that the demand is valid and the Licensee is the party liable for payment, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee determines that the demand is valid.

(C) In the event the Licensee determines that the demand is invalid, any amount withheld pending the Licensee's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York. The Licensee shall provide written notification of its determination that the demand is invalid to the beneficiary that made such demand.

**V.** Nothing in this **Exhibit O** shall relieve a party liable for payment of the obligation to pay the claims of all persons with valid and lawful claims against such party relating to the Capital Improvement Project.

**VI.** Notwithstanding any provision to the contrary contained in the License Agreement (including this **Exhibit O**), the payment guarantee made pursuant to this **Exhibit O** shall be construed in a manner consistent with Section 5 of the New York Lien Law.





**David Cerron**  
Assistant Commissioner  
Business Development &  
Special Events

**T** 212.360.3457

**E** David.cerron@parks.nyc.gov

**City of New York  
Parks & Recreation**

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

## MEMORANDUM

**To:** Hon. Mark Levine, Manhattan Borough President  
Susan Stetzer, District Manager, Manhattan Community Board 3  
Marisa Mack, District Manager, Manhattan Community Board 5  
Maxwell Vandervliet, District Manager, Manhattan Community Board 7  
Will Brightbill, District Manager, Manhattan Community Board 8  
Eutha Prince, District Manager, Manhattan Community Board 9  
Shatic Mitchell, District Manager, Manhattan Community Board 10  
Angel Mescaín, District Manager, Manhattan Community Board 11

Hon. Vanessa Gibson, Bronx Borough President  
Rev. Dr. Bruce Rivera, Chair, Bronx Community Board 3  
Ischia Bravo, District Manager, Bronx Community Board 7  
William Rivera, District Manager, Bronx Community Board 9

Hon. Antonio Reynoso, Brooklyn Borough President  
Lenny Singletary III, Chair, Brooklyn Community Board 2  
Henry Butler, District Manager, Brooklyn Community Board 3  
Michael Racioppo, District Manager Brooklyn, Community Board 6  
Eddie Mark, District Manager, Brooklyn Community Board 13  
Viola Greene-Walker, District Manager, Brooklyn Community Board 16

Hon. Donovan Richards, Queens Borough President  
Florence Koulouris, District Manager, Queens Community Board 1  
Debra Markell Kleinert, District Manager, Queens Community Board 2  
Giovanna Reid, District Manager, Queens Community Board 3  
Christian Casagnol, District Manager, Queens Community Board 4  
Frank Gulluscio, District Manager, Queens Community Board 6  
Marilyn McAndrews, District Manager, Queens Community Board 7  
Marie Adam-Ovide, District Manager, Queens Community Board 8  
Mark McMillan, District Manager, Queens Community Board 13

Hon. Vito Fossella, Staten Island Borough President  
Joseph Carroll, District Manager, Staten Island Community Board 1

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

**SUBJECT:** Notice of Intent to Seek FCRC Authorization to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with City Parks Foundation for the Sale of Naming Rights of the SummerStage festival, primarily based in Central Park, Manhattan, and the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan.

**DATE:** August 5, 2022



NYC Parks

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Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Boards 3, 5, 7, 8, 9, 10 and 11, the Bronx Borough President and Bronx Community Boards 3, 7 and 9, the Brooklyn Borough President and Brooklyn Community Boards 2, 3, 6, 13 and 16, the Queens Borough President and Queens Community Boards 1, 2, 3, 4, 6, 7, 8 and 13, and the Staten Island Borough President and Staten Island Community Board 1 that the New York City Department of Parks & Recreation (“NYC Parks”) is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with City Parks Foundation for the sale of naming rights of the SummerStage festival, primarily based in Central Park, Manhattan, and the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan.

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

If you have any questions or comments, please feel free to contact Phil Abramson, Director of Revenue Communications, at 212-360-3426 or via email at [phil.abramson@parks.nyc.gov](mailto:phil.abramson@parks.nyc.gov).

Thank you.

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

<b>AGENCY:</b> New York City Department of Parks & Recreation ("Parks")	<b>CONCESSION TITLE/DESCRIPTION:</b> Sole Source License Agreement with City Parks Foundation for the Naming Rights of the SummerStage festival, primarily based in Central Park, Manhattan, and the operation and maintenance of a food, beverage and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan.
<b># VOTES required for          proposed action =</b> 4 <input type="checkbox"/> N/A	<b>CONCESSION IDENTIFICATION #</b> M10-1-71-O

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

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

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

☐ Negotiated Concession\*

Recommended Concessionaire: City Parks Foundation
 ☒ EIN ☐ SSN # 13-3561657

Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p> <b>Initial Term:</b> To be negotiated  <b>Renewal Option(s) Term:</b> To be negotiated         </p> <p> <b>Total Potential Term:</b> To be negotiated         </p>	<p align="center"><b>ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS</b>          (Check all that apply)</p> <p align="center">(<input type="checkbox"/> Additional description attached)</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula To be negotiated</p>
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**LOCATION OF CONCESSION SITE(S)\*** ☐ N/A

**Central Park**  
**Address** Rumsey Playfield Central Park  
**Borough** Manhattan **C.B.** 5, 7, 8, 10, 11  
**Block #** 111 **Lot #** 1

**John V. Lindsay East River Park**  
**Address** Montgomery St. To E. 12 St., FDR Drive  
**Borough** Manhattan **C.B.** 3 **Block #** 262 **Lot #** 200

**Tompkins Square Park**  
**Address** Ave. A To Ave. B, E. 7 St. To E. 10 St.  
**Borough** Manhattan **C.B.** 3 **Block #** 403 **Lot #** 1

**Jackie Robinson Park**  
**Address** Bradhurst Av and Edgecombe Ave, W 145 St to 155 St  
**Borough** Manhattan **C.B.** 9, 10 **Block #** 2052 **Lot #** 1

**Marcus Garvey Park**  
**Address** Madison Ave, E. 120 St. to E. 124 St  
**Borough** Manhattan **C.B.** 11 **Block #** 1719 **Lot #** 1

**Brooklyn Bridge Park**  
**Address** Furman St., Water St. and John St. between Atlantic Ave., Old Fulton St., Main St., Adams St., and Jay St  
**Borough** Brooklyn **C.B.** 2, 6 **Block #** 199 **Lot #** 3

**Herbert Von King Park**

**Address** Marcy Ave., Tompkins Ave., bet. Greene Ave. and Lafayette Ave.

**Borough** Brooklyn **C.B.** 3 **Block #** 1790 **Lot #** 1

**Ford Amphitheatre at Coney Island**

**Address** 3052 West 21 Street

**Borough** Brooklyn **C.B.** 13 **Block #** 7071 **Lot #** 100

**Betsy Head Park**

**Address** Blake Ave., Dumont Ave., Livonia Ave. bet. Strauss St., Hopkinson Ave. and Bristol St.

**Borough** Brooklyn **C.B.** 16 **Block #** 3570 **Lot #** 1

**Crotona Park**

**Address** Crotona Park North to South, Fulton Ave to Southern Blvd and Crotona Park East

**Borough** Bronx **C.B.** 3 **Block #** 2942 **Lot #** 1

**Williamsbridge Oval**

**Address** Van Cortlandt Ave. East, Reservoir Oval East

**Borough** Bronx **C.B.** 7 **Block #** 3343 **Lot #** 400

**Soundview Park**

**Address** Bronx River, Bronx River Ave. bet. Lafayette Ave., Surf Dr.

**Borough** Bronx **C.B.** 9 **Block #** 3543 **Lot #** 1

**Socrates Sculpture Park**

**Address** Vernon Blvd., bet. Broadway and 30 Dr.

**Borough** Queens **C.B.** 1 **Block #** 501 **Lot #** 16

**Queensbridge Park**

**Address** Queensboro Bridge, 41 Rd., 40 Ave. between The East River, Vernon Blvd., and 21 St.

**Borough** Queens **C.B.** 1, 2 **Block #** 477 **Lot #** 49

**Flushing Meadows Corona Park**

**Address** Grand Central Pkwy., Whitestone Exwy. Bet. 111 St. and College Point Blvd., Park Drive East

**Borough** Queens **C.B.** 3, 4, 6, 7, 8 **Block #** 2209 **Lot #** 10

**Springfield Park**

**Address** 149 Ave, Springfield Blvd, 145 Rd, 184 St

**Borough** Queens **C.B.** 13 **Block #** 13361 **Lot #** 100

**Clove Lakes Park**

**Address** Forest Ave., Victory Blvd., between Clove Rd. and Brookside Ave., Royal Oak Rd.

**Borough** Staten Island **C.B.** 1 **Block #** 319 **Lot #** 1

**Corporal Thompson Park**

**Address** Broadway, Henderson Ave., Chappell St.

**Borough** Staten Island **C.B.** 1 **Block #** 186 **Lot #** 119

**CONCESSION TYPE (Check all that apply)****> Significant Concession:**

☐ **NO**

☒ **YES Basis:**

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

**> Major Concession:**

☒ **NO**

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

**NOTIFICATION REQUIREMENTS****Subject concession will be awarded by CSB or CSP.**☐ YES ☒ NO**If YES**, check the applicable box(es) below:

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

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

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

**AUTHORIZED AGENCY STAFF****This is to certify that the information presented herein is accurate.****Name** Alexander Han**Title** Chief of Concessions**Signature** \_\_\_\_\_**Date** \_\_/\_\_/\_\_**CITY CHIEF PROCUREMENT OFFICER****This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.****Signature** \_\_\_\_\_**Date** \_\_/\_\_/\_\_

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

To be determined at a later date – when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate a Sole Source License Agreement (Agreement) with City Parks Foundation (CPF) for the naming rights of the SummerStage festival, primarily based in Central Park, Manhattan, and the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan.

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

CPF is an independent, nonprofit organization with a mission to offer park programs throughout the five boroughs of New York City. CPF supports New York City neighborhood parks that lack access to private resources, presenting free arts, sports, educational, and community-building programs and making parks a focal point for community development. Founded in 1989, CPF works in hundreds of parks citywide, reaching hundreds of thousands of New Yorkers each year and contributing to the revitalization of communities across the five boroughs.

One of CPF's most popular arts programs is SummerStage, which debuted in 1986. SummerStage is one of the world's largest and most acclaimed outdoor music festivals. Each year, the festival brings more than 100 free performances to parks throughout the five boroughs reaching more than 280,000 audiences annually. With performances ranging from American pop, Latin and World music to dance, opera, comedy and theater, the festival reflects the dynamic and diverse cultures of New York City, presenting performances by emerging and established musicians, dancers, and literary figures from around the globe. Since its inception, more than six million people from New York City and around the world have enjoyed SummerStage.

In 2009, Parks entered into a Maintenance and Operation Agreement with CPF for the operation of SummerStage at Rumsey Playfield in Central Park. This agreement was renewed in June 2018. The total cost of the free events, maintenance and operation of the Site, and administrative expenses directly related to SummerStage festival, primarily based in Central Park, is approximately \$7 million annually. In 2016, CPF entered into a Sole Source License Agreement with Parks for the operation and maintenance of

a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park. In 2019, CPF entered into an additional Sole Source License Agreement with Parks for the naming rights of the SummerStage festival. Both agreements expire on June 27, 2023. Parks and CPF are interested in entering into new singular Agreement to include both the food, beverage and merchandise concession, as well as the naming rights concession.

The revenue generated from these activities help CPF offset the high costs of maintenance and operations of the Site, programming events in Central Park and in parks throughout the five boroughs, most of which are offered free of charge, as well as the administrative expenses associated with this very popular series. Any revenues in excess of the amount attributable to covering the cost of the free events, for maintenance and operation of the Site, and administrative expenses directly related to SummerStage will be strictly used for additional free public programming at the Site.

Given CPF's commitment to providing New Yorkers with world-class entertainment experiences at SummerStage and given CPF's Maintenance and Operation Agreement for the operation of SummerStage, Parks believes that it is in the best interest of the City to negotiate an Agreement with CPF, rather than proceed with a competitive solicitation process.

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

Parks is requesting FCRC authorization to utilize different procedures, pursuant to Section 1-16 of the Concession Rules, to negotiate a License Agreement with CPF, which will go before the FCRC on September 14, 2022 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed License Agreement before presenting it to the FCRC for "Step 2" approval at a second meeting. If Parks determines the concession to be non-significant, the agency will present the fully negotiated License Agreement with CPF to the FCRC and request the required FCRC authorization to enter into the License Agreement directly (without the need for an initial public hearing).

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

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

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

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

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

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

**(Cal. No. 2)**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure to negotiate a sole source license agreement with City Parks Foundation for the sale of naming rights of the SummerStage festival, primarily based in Central Park, Manhattan, and the operation and maintenance of a food, beverage, and merchandise concession related to the presentation of live events at SummerStage in Central Park, Manhattan.

**BE IT FURTHER RESOLVED**, that Parks shall submit the Agreement it proposes to enter into with City Parks Foundation to the Franchise and Concession Review Committee for approval.

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

September 14, 2022

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

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

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



# Memo

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

**From:** Christina Rowley  
NYC & Company Inc.

**CC:** Jean Paul Venegas  
Department of Small Business Services

Alexandre Stamoulis  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** August 5, 2022

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

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Dear NYC Borough Presidents and NYC Community Board Presidents:

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

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

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

Best,  
Christina Rowley

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

<b>AGENCY:</b> NYC & Company, Inc. on behalf of NYC Department of Small Business Services	<b>CONCESSION TITLE/DESCRIPTION:</b> Non-Exclusive Use of City-Owned Trademarks on Merchandise  <b>CONCESSION IDENTIFICATION #</b> NYCCO-2022-004
<b># VOTES required for proposed action =</b> 4 <input type="checkbox"/> N/A	

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

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

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

☐ Negotiated Concession\*

Recommended Concessionaire: Fair Harbor Clothing PBC. ☒ EIN ☐ SSN # 47-2959251  
 Attach Memo(s) \*

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

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

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

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

**AUTHORIZED AGENCY STAFF**

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

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

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

**CITY CHIEF PROCUREMENT OFFICER**

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

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

City Chief Procurement Officer

# CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

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

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

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

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

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

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

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

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

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

Fair Harbor Clothing, which is based in New York, was founded in 2015, by brother and sister Jake and Caroline Danehy. It is a sustainable fashion company that produces swimsuits and apparel from recycled ocean plastic that has been collected from around the world. Fair Harbor has expressed interest in partnering with New York City, to create sustainable clothing for consumers. This program is aimed to bring attention to not only the city but to one of the City's core focuses, sustainability. With the current state of travel and retail, it is in the City's best interest to continue to create new programs that elevate New York City to top of mind nationally, as well as showing the City's commitment to sustainability. Fair Harbor has the ability to target a new group of people and help associate the City's brand with sustainable fashion. For these reasons, it is in the City's best interest to enter into a relationship and negotiate a sole source agreement with Fair Harbor Clothing. This proposed non-exclusive license agreement will not bar opportunities for other types of apparel manufacturers.

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

NYC & Company Inc./SBS is requesting authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a sole source agreement with Fair Harbor Clothing PBC for the non-exclusive use of City-owned trademarks on apparel and accessories. Fair Harbor Clothing PBC is a local small business with national recognition and has the ability to create an entire new set of customers for the licensing program. Fair Harbor Clothing will help expand the type of goods consumers are able to purchase and will help expand the licensing program out of souvenirs and into items New Yorkers are proud to wear and a program they want to support. Given the sustainable nature of all the materials used to create the apparel and the potential increased awareness for the licensing program, we believe it is in the City's best interest to enter into a sole source agreement. We intend to bring this matter before the FCRC on September 14, 2022 ("Step 1"). Once negotiated and if determined by NYC & Company Inc./SBS to be a significant concession, NYC & Company Inc./SBS and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for ("Step

2") approval at a second public meeting. If NYC & Company Inc./SBS determines the concession to be non-significant, NYC & Company Inc./ SBS will present the fully negotiated Agreement directly (without need for an initial joint public hearing).

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

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

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

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

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

**(Cal. No. 3)**

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

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

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

**September 14,**  
**2022**

Date:

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

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