



## **MEMORANDUM**

**TO:** Hon. Mark Levine, Manhattan Borough President  
Marisa Mack, District Manager, Manhattan Community Board #5  
Penny Ryan, District Manager, Manhattan Community Board #7  
Will Brightbill, District Manager, Manhattan Community Board #8  
Andrew Lassalle, District Manager, Manhattan Community Board #10  
Angel D. Mescaín, District Manager, Manhattan Community Board #11

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

**SUBJECT:** Notice of Joint Public Hearing, April 11, 2022: Intent to Award a Sole Source License Agreement to the Central Park Conservancy, Inc. for the Operation, Management, and Maintenance of the Harlem Meer Facility and to provide Ancillary Services in Central Park, Manhattan. Concession No. M10-106-IS.

**DATE:** March 25, 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 on Monday, April 11, 2022 at Spector Hall, 22 Reade Street, Manhattan, New York, NY 10007, commencing at 2:30 p.m. relative to:

INTENT TO AWARD a Sole Source License Agreement for the Operation, Management, and Maintenance of the Harlem Meer Facility and to provide Ancillary Services in Central Park, Manhattan, for a twenty (20) year term, to the Central Park Conservancy, Inc. (“Licensee”).

In lieu of a license fee, Licensee will use all gross receipts to offset the cost of providing services, maintenance, and repairs at the Licensed Premises. If in any year during the term Licensee’s gross receipts, excluding Other Revenue Sources (as defined in the Agreement), is projected by Parks to exceed its annual operating costs, Parks shall direct Licensee in writing to continue its operations at the Licensed Premises, provided it is determined that there is sufficient time within the then current operating year for Licensee to implement a plan to either (a) provide additional services, programming, maintenance and/or repairs at the Licensed Premises; (b) provide additional services, programming, maintenance and/or repairs in other areas of Central Park operated and maintained by Licensee; or (c) remit the excess revenue to the City.

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 April 8, 2022.

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 **March 28, 2022** through **April 11, 2022**.


2) Download from **March 28, 2022** through **April 11, 2022** on NYC Parks’ website. To download a draft copy of the agreement, visit <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis>



NYC Parks

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 by **April 1, 2022**. For mail-in requests, please include your name, return address, and Concession # M10-106-IS

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>Central Park Conservancy, Inc.</u> <b>Address:</b> <u>14 East 60<sup>th</sup> Street, New York, NY 10022</u> <b>Telephone #</b> <u>(212) 310-6600</u> <input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN</b> <u>#13-3022855</u> <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Sole Source License Agreement with the Central Park Conservancy, Inc. for the operation, management, and maintenance of the Harlem Meer facility, and to provide ancillary services in Central Park, Manhattan.</u>
<b># VOTES required for proposed action</b> <b>=</b> <u>4</u> <input type="checkbox"/> <b>N/A</b>	<b>CONCESSION I.D.#</b> <u>M10-106-IS</u>	

## LOCATION OF CONCESSION SITE(S\*)

**Harlem Meer**

**Address** Central Park: between East 106<sup>th</sup> St, East 110<sup>th</sup> St, 5<sup>th</sup> Avenue & East Drive

☐ **N/A** \*Attach additional sheet

**Borough** Manhattan **C.B.** 5, 7, 8, 10, 11 **Block #** 1111 **Lot #** 1

## SELECTION PROCEDURE

(\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids
- ☐ Competitive Sealed Proposals\* ( ☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_ )
- ☒ Different Selection Procedure: \* ( ☒ Sole Source Agreement ☐ Other \_\_\_\_\_ )
- > FCRC approved different selection procedure on 07/22/2021.
- ☐ 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**

In lieu of a license fee, Licensee will use all gross receipts to offset the cost of providing services, maintenance, and repairs at the Licensed Premises. If in any year during the term Licensee's gross receipts, excluding Other Revenue Sources (as defined in the Agreement), is projected by Parks to exceed its annual operating costs, Parks shall direct Licensee in writing to continue its operations at the Licensed Premises, provided it is determined that there is sufficient time within the then current operating year for Licensee to implement a plan to either (a) provide additional services, programming, maintenance and/or repairs at the Licensed Premises; (b) provide additional services, programming, maintenance and/or repairs in other areas of Central Park operated and maintained by Licensee; or (c) remit the excess revenue to the City.

## 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 06/04/2021, which was at least 40 days in advance of the FCRC meeting on 07/22/2021 at which the agency sought and received approval to use a different selection procedure.
- ☐ The Agency certifies that each affected CB/BP received written notice on \_\_/\_\_/\_\_, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on \_\_/\_\_/\_\_.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_/\_\_/\_\_.

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

**Award is a major concession.**

☐ YES ☒ NO

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

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

**AUTHORIZED AGENCY STAFF**

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

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

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

Name Alexander Han

Title 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 the Central Park Conservancy, Inc.. ("Licensee") for the operation, management, and maintenance of the Harlem Meer Facility and to provide ancillary services in Central Park, 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.

In lieu of a license fee, Licensee will use all gross receipts to offset the cost of providing services, maintenance, and repairs at the Licensed Premises. If in any year during the term Licensee's gross receipts, excluding Other Revenue Sources (as defined in the Agreement), is projected by Parks to exceed its annual operating costs, Parks shall direct Licensee in writing to continue its operations at the Licensed Premises, provided it is determined that there is sufficient time within the then current operating year for Licensee to implement a plan to either (a) provide additional services, programming, maintenance and/or repairs at the Licensed Premises; (b) provide additional services, programming, maintenance and/or repairs in other areas of Central Park operated and maintained by Licensee; or (c) remit the excess revenue to the City.

**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:**

In 1980, the Central Park Task Force and the Central Park Community Fund merged to become the Central Park Conservancy, Inc. ("CPC"), a domestic not-for-profit corporation. CPC operates Central Park through a public-private partnership with Parks. For the past 40 years, CPC has invested in Central Park's restoration and, through a Maintenance and Operations Agreement with Parks, has taken over primary responsibility for Central Park's maintenance and operations.

Following two decades of neglect and decline during the 1960s and 1970s, CPC led three successful capital campaigns toward rebuilding and transforming Central Park between 1987 and 2008. In 2016, CPC announced the *Forever Green: Ensuring the Future of Central Park* campaign in order to further support the restoration and preservation of Central Park. This was the foundation of a long-term vision for the entire park and its woodlands, playgrounds, and architecturally historic structures. The campaign came to a successful close in 2019, raising more than \$500 million for Central Park. This included over \$150 million for the re-envisioning of the Harlem Meer Outdoor Center, (\$100 million raised privately by CPC and \$50 million allocated by the City), a project which will be the capstone of CPC's work in the north end of the Park and its largest project completed to date.

The Harlem Meer facility was built in 1966 as a pleasant rural landscape that New Yorkers could escape to from their urban-centric lives. However, after its construction, the facility immediately marred the park's beauty with its obstruction of the park views and various engineering flaws. It blocked the flow of water from the Loch to Harlem Meer, as well as the connection between the Meer landscape and the rest of the park, and over time has fallen into severe disrepair requiring a complete restoration and reconstruction. The facility had operated under a joint concession agreement with Wollman Rink, a similar facility at the southern end of Central Park, from November 1, 2001 through April 29, 2021.

Out of the \$100 million raised by CPC mentioned above, \$60 million is allocated for the redevelopment of the Harlem Meer Facility and \$40 million is allocated for its long-term maintenance and operation. CPC will minimize the physical and visual barrier created by the existing facility and will integrate the new facility into a restored landscape to provide a welcoming, accessible facility that serves park patrons year-round through active and nature-based recreation.

Parks believes that it is in the City's best interest to enter into a sole source agreement to allow CPC to operate the Harlem Meer Facility as a public amenities which will include the operation of an ice-skating rink in the winter; supporting Parks with the operation of a public swimming pool in and splash pad in the summer; and year-round public programs and concessions revenue-producing activities. Through philanthropic support and local community partnerships, CPC plans to provide as much free and subsidized programming to the community as possible; including tours, active and passive recreational activities, food services, and other parks appropriate activities subject to Parks' prior written approval.

Parks also believes it is in the City's best interest to enter into an agreement with CPC because CPC will be able to provide major capital investment; mechanical, electrical and plumbing systems; site furnishing; a 24-hour security system and philanthropic support for long-term maintenance and programming to guarantee greater public access to the facility.

CPC plays a critical role in the maintenance and operations that keep Central Park clean, safe and beautiful. Today, Central Park is an international model for urban parks and one of the premier green spaces in New York City and the United States. CPC's crew works year-round to maintain the landscapes, bodies of water, stonework, benches, playground and facilities in order to host the 42 million visitors Central Park receives each year.

Given that CPC has a dedicated and specific commitment toward the management, maintenance, operation, and programming of the Harlem Meer -Facility at Central Park, Parks believes that it is in the best interest of the City to enter into a Sole Source License.

**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 03/25/2022, 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 03/25/2022, 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 03/25/2022.

☒ Our Town, a NYC local newspaper published in the affected borough(s) on 03/31/2022 and 04/07/2022.

☒ West Side Spirit, a NYC local newspaper published in the affected borough(s) on 03/31/2022 and 04/07/2022.

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

☒ A Public Hearing was conducted on 04/11/2022.

**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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LICENSE AGREEMENT

BETWEEN

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

AND

**CENTRAL PARK CONSERVANCY, INC.**

*for*

**THE OPERATION, MANAGEMENT AND MAINTENANCE OF THE HARLEM MEER  
FACILITY AND TO PROVIDE ANCILLARY SERVICES  
IN CENTRAL PARK, MANHATTAN**

NEW YORK, NEW YORK

**M10-106-IS**

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



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**LICENSE AGREEMENT** ("License" or "License Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2022, between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and Central Park Conservancy, Inc. ("CPC" or "Licensee"), a New York not-for-profit corporation, with an address at 14 East 60<sup>th</sup> Street, New York, New York 10022. (Parks and CPC will be collectively referred to as the "Parties".)

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

**WHEREAS**, the Commissioner, pursuant to Section 533 of the City Charter, is charged with the management and care of the City's parks and facilities therein, and has the duty to plan, develop, conduct and enter into arrangements on behalf of Parks for the benefit of the public; and

**WHEREAS**, Parks has jurisdiction over Central Park in the Borough of Manhattan (the "Park"); and

**WHEREAS**, the Harlem Meer is located in Central Park in the Borough of Manhattan, which is property under the jurisdiction and control of Parks; and

**WHEREAS**, pursuant to its Certificate of Incorporation, Licensee was formed in 1980 for the purpose of, and works in partnership with Parks to promote and assist in the restoration, maintenance, and management of Central Park by providing funds and resources not available from the City; and

**WHEREAS**, as part of Licensee's partnership with the City, Licensee has raised Sixty million dollars (\$60,000,000) from private philanthropy for the redevelopment of the swimming pool (the "Pool"), the ice-skating rink (the "Ice-Skating Rink"), and a new building to support the Pool and Ice-Skating Rink (the "Building") at Harlem Meer, the northern end of the Park, as shown on Exhibit A attached hereto (the Pool, the Ice-Skating Rink, and the Building collectively referred to as the "Facility"); and

**WHEREAS**, Licensee has raised an additional Forty million dollars (\$40,000,000) for the long-term maintenance and operation of the Licensed Premises (as hereinafter defined in Section 2.1(xiii)) from private philanthropy; and

**WHEREAS**, upon the completion of the redevelopment of the Licensed Premises, the Commissioner seeks to provide for the operation, management and maintenance of the Licensed Premises for the accommodation, enjoyment, and convenience of the public; and

**WHEREAS**, Licensee is willing to perform responsibilities associated with operating, managing and maintaining the Licensed Premises for the benefit of the public, including the

operation of the Ice-Skating Rink, supporting Parks with the operation of the Pool, and providing a variety of year-round public programs at the Licensed Premises; and

**WHEREAS**, revenue from the operation of the Licensed Premises is anticipated to be *de minimis* relative to the cost of operating the Licensed Premises, and Licensee intends to commit all proceeds from the operation of the Licensed Premises to fund the long-term maintenance of and capital investment to the Licensed Premises, and for free public programming at the Licensed Premises unless otherwise provided herein; and

**WHEREAS**, since 1980, Licensee has raised and expended over \$1 billion from private donations for the benefit of the Park for maintenance, restoration, and reconstruction work, and for public programming for Park visitors, and has over 40 years of experience and expertise in maintaining and improving the Park; and

**WHEREAS**, Parks and Licensee have collectively created an effective public-private partnership whereby Parks and Licensee complement each other's efforts in connection with improving and administering Central Park, which also includes, but is not limited to, the Licensed Premises; and

**WHEREAS**, the Franchise and Concession Review Committee ("FCRC") authorized Parks to enter into this Sole Source License Agreement with CPC;

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

## **I. GRANT OF LICENSE**

**1.1 (a)** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this non-exclusive License to operate, manage and maintain, or cause to be operated, managed, and maintained, the Licensed Premises or portions thereof, as shown on Exhibit A, as a seasonal Ice-Skating Rink, which may include a pro shop, a food service facility, events and programming space, seasonal and year-round ancillary services, and to provide recreational, educational and cultural programs at the Licensed Premises for the public's benefit and best interest, in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner. The operation of the Ice-Skating Rink during the Ice-Skating Rink Season (defined in Section 2.1 (xii)(a) below) shall include public programming as reasonably approved by Parks. The use of the Ice-Skating Rink for hockey, league or any other group sport play will be subject to Parks' prior, reasonable written approval. During the Pool Season (defined in Section 2.1(xii)(b) below), Licensee shall support Parks' with the operation of the Pool in order to operate a portion of the Licensed Premises as a public swimming pool consistent with the operation of other NYC public pools. In addition, with Parks' prior written approval, Licensee may be permitted, or caused to be permitted, to operate seasonal and/or year-round Mobile Units (as defined in Section 2.1 (xv) below) within the Licensed Premises. All plans, schedules, services, events, menu items, merchandise, rates, fees and prices, and hours of operation are subject to Parks'

prior written approval. Except as provided herein, Licensee will be responsible for all costs associated with the operation and maintenance of the Licensed Premises.

(b) Licensee may, subject to the prior written approval of Parks, enter into agreements with third parties ("Sublicensees") to provide all or any of the services contemplated in this License in accordance with the terms and conditions set forth herein ("Sublicense Agreements"). The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, two (2) copies of any proposed Sublicense Agreement shall be submitted to Parks with Licensee's written request for approval.

(c) Licensee shall require said Sublicensee(s) to comply with all provisions contained within this License applicable to Licensee, as and to the extent such provisions are applicable to each Sublicensee, including, but not limited to, obtaining insurance required of the Licensee under this Agreement or such lesser coverage, as approved in writing by Parks, provided that Licensee is maintaining all insurance required under this Agreement with respect to the sublicensed premises and indemnifying the City, and its officials and employees, as set forth in Sections 25 and 26 herein, as such indemnity may be applicable to each Sublicensee.

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

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

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary to operate and maintain the Licensed Premises in accordance with the terms of this License, including but not limited to the Fire Department codes for the provision of supplemental equipment for fire protection such as extinguishers, hoses and hose reels. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any Certificates of Occupancy and Permits of Assembly, as issued. Parks and the Commissioner shall cooperate with Licensee in all reasonable aspects in obtaining such approvals, permits and licenses, including but not limited to executing or authorizing applications for same as may be necessary to permit Licensee to obtain such approvals, permits, or licenses. Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or Commissioner's duly authorized representative, or the relevant City official if the required approval is the City's. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same

is, in each instance, in writing and duly signed by the Commissioner or Commissioner's duly authorized representative. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein, subject to all applicable notice and cure periods set forth herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein as set forth in this Agreement, as more particularly set forth in Section 4.1 hereof. Notwithstanding the foregoing, Licensee shall not be responsible for obtaining approvals, permits and other licenses required by Federal, State and City laws, rules, regulations, and orders to the extent they specifically relate to the operation of the Pool as a public swimming pool.

**1.3** It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided.

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or her representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement. Parks, to the extent possible, agrees to use reasonable efforts to minimize interference with Licensee's business in the Licensed Premises during any such entry and shall repair any damage to the Licensed Premises caused by such entry.

**1.5** Licensee may use the names "Davis Family Outdoor Center," "Gottesman Pool & Rink," and "Kempner Family Skating Ribbon & Kayak Launch" in connection with its operations under this License, to identify a part of or the entire Licensed Premises. In addition, the Parties will mutually agree on an appropriate recognition of The Carson Family Charitable Trust for their donation to Licensee in support of the Licensed Premises. Any other names or variation of the aforementioned names are subject to Parks final approval. The City is the owner of the designations and trademarks "Harlem Meer", "Central Park" and variations thereof. All intellectual property rights in the Licensed Premises, as well as "Harlem Meer", "Central Park" and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks, including Parks' signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications are the property of the City ("City IP"). Licensee may use the names "Harlem Meer" and "Central Park" in connection with its operations under this License Agreement to identify the location of the Licensed Premises, and any other uses of "Harlem Meer", "Central Park" or any other City IP may be only pursuant to a separate written agreement between the City and Licensee. Any other business or trade name that Licensee wishes to use in connection with its operation of the Licensed Premises shall be subject to the prior written approval of the Commissioner. In addition, Parks may require that the City own the portion of any other name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name or that may otherwise contain City IP. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with Parks' property.

## **II. DEFINITIONS**

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

(i) “Alteration” shall mean (excepting ordinary repair and maintenance):

(a) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

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

(ii) Intentionally omitted.

(iii) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises as approved by Parks. Capital Improvements also includes all Alterations and "Additional Fixed Equipment," as that term is defined in Section 2.1(i) herein below, which 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.

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

(v) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or her designee.

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

(vii) Intentionally omitted.

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

(ix) “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.

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

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

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

(xi) (a) "Gross Receipts" shall include, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, provided, however, that Gross Receipts shall exclude (x) 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 and (y) the amounts received by Licensee in connection with the sale of inventory and equipment (other than Fixed and Additional Fixed Equipment) outside the ordinary course of Licensee's business. Gross Receipts shall include any funds received for orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises and shall include all receipts of Licensee or orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from 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. All receipts from rentals of the Licensed Premises for use by third parties shall be included in Gross Receipts. All revenue generated from Licensee's Special Events (hereinafter defined) at the Licensed Premises shall be included in Gross Receipts.

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

(c) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 20 herein, but excluding amounts charged by any party which rents the Ice-Skating Rink for a Parks' Special Event or Licensee's Special Event and which amounts are retained by such party. In the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts. Further, Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") Licensee receives in connection with all services provided by Licensee's subcontractors or Sublicensees. In addition, Gross Receipts shall include the net (but only the net) income received by Licensee in connection with services provided by skating instructors. For clarity, if Licensee charges a student fifty dollars (\$50.00) for a lesson and subsequently pays the skating instructor thirty dollars (\$30.00), the amount to be reported as Gross Receipts is the net amount of twenty dollars (\$20.00).



**(iv)** Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

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

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

**(xii)** Unless otherwise approved in advance in writing by Parks,

**(a)** “Ice Rink Season” shall mean the period each Year during the Term which the Licensee shall operate and manage the Ice-Skating Rink for public ice skating at the Licensed Premises. The Parties hereto will jointly agree on the dates of the Ice Rink Season, which will begin no later than November 30 in each calendar year during the Term, and which will end no earlier than March 15 in the following year, or such other dates as shall be reasonably approved by Parks.

**(b)** “Pool Season” shall mean the period each Year during the Term when the Pool and splash pad will be operated by Parks, including any necessary set up and cleanup/take down periods. During the Pool Season, Licensee shall continue to maintain the Licensed

Premises. The Parties anticipate that during each Operating Year during the Term, the Pool Season shall begin on May 15 when set-up operations begin, and the Pool Season shall conclude on October 1, upon conclusion of the clean-up/take down operations. The exact dates of when the Pool is open to the public shall run concurrently with Parks' citywide outdoor swimming pool schedule, or as otherwise approved by Parks. Parks shall operate the splash pad during the Pool Season except for when doing so may be impractical due to weather conditions and/or may interfere with Pool operation.

(c) "Flex/Shoulder Season" shall mean the period each Year during the Term when neither the Ice-Skating Rink nor the Pool is open for public use. The Flex/Shoulder Season may be used for seasonal changeover during which time the Licensed Premises or portions thereof may be closed to the public. Licensee may utilize the Licensed Premises for additional recreational programming for the general public during the Flex/Shoulder Season consistent with Licensee's other programming in Central Park and approved by Parks. The exact dates of the Flex/Shoulder Season are subject to Parks' reasonable approval.

(xiii) "Licensed Premises" or "Premises" shall mean the areas designated on Exhibit A.

(xiv) Intentionally Omitted.

(xv) "Mobile Unit" shall be defined as a self-contained service operation, located in a vehicle or a movable stand, self-or otherwise propelled, intended for the sale of food and beverages, and/or merchandise. Non-processing pushcarts and processing carts shall all be considered "Mobile Food Units" that can be used to store, prepare, display or serve and sell food.

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

(xvii) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year, except that the final Year of the Term (as hereinafter defined) of the License Agreement shall end on the Expiration Date (as hereinafter defined).

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

**3.1** The term ("Term") of this Agreement shall be twenty (20) years and shall become effective upon registration with the Comptroller's Office, and commence upon the date in a written Notice to Proceed ("Notice to Proceed") issued to Licensee (the "Commencement Date") and shall terminate on the twentieth (20<sup>th</sup>) anniversary of the date on the Notice to Proceed or

upon the sooner termination of this License pursuant to any provision of Article 4 of this License (the "Termination Date" or "Expiration Date"). In no event shall the Agreement become effective prior to registration with the Comptroller. It is understood and agreed by the Parties that Parks will not issue a Notice to Proceed unless and until Licensee's initial construction of the Licensed Premises is Finally Complete, it being the intent of the Parties that the term of this License shall not begin until such time as the Licensed Premises are ready to be open and available for public use.

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

#### **IV. RIGHT TO TERMINATE**

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

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

(b) The following shall constitute events of default for which this License may be terminated on ten (10) days' notice:

- (i) the appointment of any receiver of Licensee's assets;
- (ii) the making of a general assignment by Licensee for the benefit of creditors;
- (iii) 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
- (iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

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

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

**4.3** Licensee will have the right to terminate this Agreement under the following conditions:

(a) imposition by Parks of additional material conditions to or change in the scope of this License which CPC reasonably finds unacceptable, or

(b) material breach by Parks or City of any of its obligations hereunder.

Licensee will provide Parks not less than ten (10) days' written notice of termination which specifies the reason(s) therefor, and, in the case of (a) or (b) above, the City and/or Parks shall have thirty (30) days to cure the basis for Licensee's termination.

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

**4.5** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises. Licensee acknowledges that any personal property remaining on the Premises within thirty (30) days following 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 the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises (other than possessions which are permitted or required to remain on the Premises pursuant to the terms and conditions of this License) during the time prescribed in this Agreement. In the event that Licensee removes personal property from the Licensed Premises beyond the expiration or sooner termination of the License as contemplated by this Section, then Licensee's obligations with respect to insurance and indemnification under this License shall continue until such property is removed.

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

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

## **V. REVENUE**

**5.1** In lieu of a license fee, Licensee shall use the revenue generated from the sale of goods and services described in Section 1.1(a), expressed as Gross Receipts, to offset the cost of providing services, maintenance, and repairs (collectively referred to as “Operating Costs”) at the Licensed Premises. In no event shall the revenue or Gross Receipts received by Licensee from the operation of the Licensed Premises, excluding Other Revenue Sources (as defined below), exceed the Operating Costs. If in any year during the Term Licensee’s revenue or Gross Receipts, excluding Other Revenue Sources, is projected by Parks to exceed its annual Operating Costs, Parks shall direct Licensee in writing to continue its operations at the Licensed Premises, provided it is determined that there is sufficient time within the then current Operating Year for Licensee to implement a plan to either (a) provide additional services, programming, maintenance and/or repairs at the Licensed Premises; (b) provide additional services, programming, maintenance and/or repairs in other areas of Central Park operated and maintained by Licensee; or (c) remit the excess revenue to the City. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License Agreement and as such will be subject to immediate termination.

**5.2** Intentionally omitted.

**5.3** Other Revenue Sources generated from the Licensed Premises, which shall also be expressed as Gross Receipts, are as follows:

- (a) funds generated by corporate sponsorship opportunities that meet the criteria for “Qualified Sponsorship Payments” under Section 513(i) of the Internal Revenue Code; and
- (b) funds generated by CPC Special Events for which there is a fee or suggested donation to attend, so long as these events do not have the specific purpose of benefitting the Licensed Premises; and
- (c) funds collected at CPC donation boxes at the Licensed Premises; and
- (d) funds generated by any fee-based Central Park audio guide; and
- (e) funds generated by the sale of custom park tours; and
- (f) funds generated by CPC’s membership program.

**5.4** Operating Costs shall exclude any expenses associated with Licensee’s fundraisers or Special Events that do not have the specific purpose of benefitting the Licensed Premises. Additionally, Operating Costs shall exclude any and all administrative expenses directly or indirectly related to the operation of the Licensed Premises, including, but not limited to:

- (a) any allocation of Licensee office rent or overhead; and
- (b) all costs and expenses attributable to the corporate or development offices (including any portion of the salary of the President or other development professionals employed by Licensee); and
- (c) any other costs, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this Agreement.

**5.5** On or before the thirtieth (30<sup>th</sup>) day following the end of each month of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipt, signed and verified by an officer of Licensee, reporting any Gross Receipts generated by Licensee under this License Agreement and by all Sublicensees under properly authorized Sublicense Agreements during the preceding month. Each such report shall report the Gross Receipts generated at the Licensed Premises in the following categories:

Admissions	Gross Receipts from rates and charges for use of the Licensed Premises, including the actual numbers of patrons admitted for ice skating and spectator fee;
Skate rental	Gross Receipts from rates and charges for use of ice and roller skates provided by Licensee;
Ice rental	Gross Receipts from rates and charges for use of ice and roller rink for hockey and figure skating and other rentals;
Skating instruction	Net funds received from skating instruction;
Skate sharpening/repairs	Gross Receipts from skate sharpening/repairs;
Pro Shop	Gross Receipts from the operation of a pro shop at the Licensed Premises;
Food and Beverage Service	Gross Receipts from the sale of food and beverages at the Licensed Premises;
Locker Rentals	Gross Receipts from locker rentals at the Licensed Premises;
Mobile Units	Gross Receipts from sales of food and/or merchandise at the Licensed Premises;
Merchandise Sales	Gross Receipts from the sale of Central Park Conservancy merchandise at the Licensed Premises; and
Miscellaneous	Any other sources of income including, but not limited to, Other Revenue Sources mentioned above in Section 5.3, realized from the Licensee's operations at the Licensed Premises.

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

**(c)** Licensee agrees that all excess proceeds in connection with the operation of the Licensed Premises shall be re-invested in the Licensed Premises and in programming at the Licensed Premises ("Re-investment") or otherwise provided in Section 5.1. At the end of each Operating Year, Licensee shall submit to Parks an annual audited statement setting forth the excess proceeds from the prior Operating Year along with an accounting of excess proceeds that have been re-invested in the Licensed Premises and/or its programming.

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

**5.6** On or before the sixtieth (60<sup>th</sup>) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement (on an accrual basis) pertaining to operations under this License, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in a format reasonably approved by Parks. Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts.

**5.7 (a)** Licensee, during the Term of this License, shall be required to accept cash and credit/debit cards as a form of payment, and shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales and rental information from each sales or rental transaction. Specifically, sales or rental information must be recorded electronically, via a point-of-sale system, and must include, but is not limited to, details on each sales or rental transaction, the item(s) sold, time, date of sale or rental and price of the item sold or rented. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a separate accounting system for all deposits related to this license's generated revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

**(b)** Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee from and after commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

**(c)** The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably

required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 2027's Gross Receipts are missing and the highest April Gross Receipts occurred in April 2024, then April 2027's "revised" Gross Receipts shall be calculated using April 2024's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

(d) All records kept and maintained pursuant to this Section 5.7 may be maintained in an electronic format.

## **VI. RIGHT TO AUDIT**

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

**6.2** The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License



and a default hereunder which shall entitle Parks to terminate this License following the giving of notice and expiration of applicable cure periods pursuant to Section 4.1(a) hereof.

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

## **VII: CAPITAL IMPROVEMENTS**

**7.1** 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. Consistent with the notion of a public-private partnership and in an effort to allocate applicable resources, the Licensee and Parks shall annually coordinate the preparation of operating, expense, fundraising, and capital budgets, including any amendments for the Licensed Premises.

**7.2** Additionally, the Licensee and Parks shall review and consult with each other concerning operating assumptions, major fundraising projects, budget allocations, maintenance, operation, program priorities, requests for proposals or expressions of interest, and the like. Furthermore, Parks shall use its best efforts to aid in the facilitation of any and all projects undertaken by Licensee, including, but not limited to, design review, communication and coordination with the New York City Landmarks Preservation Commission and the New York City Public Design Commission, and the making and submitting of applications for permits, authorizations, approvals and consents from City agencies that own or control the City property at issue, such as the New York City Department of Buildings and the New York City Department of Environmental Protection.

**7.3** In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks' prior written approval, the Licensee may enter into contracts for approved Parks' capital projects and may supplement Parks and other public capital funds with funds for the development of these projects.

## **VIII. ALTERATIONS**

### **8.1 Alterations by Licensee.**

(a) Licensee may alter the Licensed Premises only in accordance with the requirements of this Article. Alterations shall become property of City, at its option at any time after their attachment, installation or affixing. Except for ordinary repair and maintenance, "Alterations" shall mean:

(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 immediate adjacent areas;

(iii) Any work, excluding ordinary maintenance and repair, 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; and,

(v) Any seasonal landscaping or planting that constitutes a significant departure from landscaping, horticulture or planting previously done by Licensee;

(vi) Any major landscaping that includes planting or removal of trees, flowers, or shrubbery.

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

(i) Obtain Commissioner's written approval for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work.

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

(iii) Notify Commissioner of completion of, and the making final payment for, any alteration within ten (10) days after the occurrence of said completion or final payment;

(iv) 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.

(c) In order to guarantee prompt payment of moneys due to a contractor or to contractor's subcontractors and to all persons furnishing labor and materials to the contractor or subcontractor in the prosecution of any alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee, or a contractor engaged by Licensee, will be required to post a payment bond or other form of undertaking approved by Parks for one hundred percent (100%) of the cost of such alterations before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. To the extent that an alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of this contract regarding payment bonds for the work to be performed, including any requirements to obtain a payment bond under State Finance Law § 137 or § 5 of the Lien Law, as applicable. 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 Section; (i) Licensee guarantees payment in accordance with the provisions of Exhibit C, attached hereto and made apart 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 person furnishing labor or materials to such contractors or subcontractors in the prosecution of the alteration.

(d) All alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, or contractors shall be at the Licensee's sole cost and expense (other than any agreed contribution from the City, and contributions from other public or private sector partners or donors) and this work shall not commence until the Licensee obtains the Commissioner's prior written approval, or Commissioner's designee, and any City or other governmental authorizations, permits, and approvals that may be required.

(e) The following activities do not constitute an Alteration:

(i) Landscaping that does not involve the installation, replacement, modification or relocation of 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;

(ii) Installation of Expendable Equipment ("Expendable Equipment" shall mean all equipment, other than Fixed Equipment, provided by Licensee);

(iii) Repair and maintenance of Expendable Equipment or Fixed Equipment, including painting any such equipment;

(iv) Day-to-day maintenance of the Licensed Premises; and

(v) Signage, as further described in Article 14 in this Agreement.

## **8.2      Alterations by Parks.**

(a) Parks may, in its sole but reasonable judgment and upon reasonable notice to Licensee, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect. Parks shall use reasonable efforts to give Licensee at least fourteen (14) days' written notice of any such work and to not interfere with Licensee's operations or use of the Licensed Premises. Parks will use reasonable efforts to schedule any such alterations, additions, decorations, repairs, or improvements at such times as will cause the least interference with Licensee's operations.

(b) Parks reserves the right to perform construction or maintenance work in its reasonable discretion at the Licensed Premises at any time during the Term of this License. Licensee agrees to cooperate with Parks, to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use reasonable efforts to give Licensee at least fourteen (14) days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks shall use its reasonable efforts to perform such work in a way which minimizes interference with Licensee's operations at the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as reasonably determined by the Commissioner.

(c) In the event that Licensee must close all or a portion of the Licensed Premises for such Parks' purpose, then Licensee may propose and submit for the Commissioner's reasonable approval a plan to equitably address the impact of the closure, including, but not limited to, a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for any claims, damages, and injury resulting from its work hereunder, except to the extent such claims, damages, and injury is caused by the negligence or intentional tortious act of Licensee and/or any Sublicensee.

## **IX. FIXED AND EXPENDABLE EQUIPMENT**

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

**9.2** The City has title to all Fixed Equipment on the Premises as of the Commencement Date. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the affixing of said equipment or the Substantial Completion of such construction, renovation, or improvements during the term of this License. To the extent City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of Commissioner, to remove such equipment, other than Fixed Equipment, and restore the Licensed Premises to Parks to the condition the same existed prior to the applicable construction, renovation, or improvement. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.

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

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

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

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

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

## **X. 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 on the Licensed Premises and an account with Con Edison (or other relevant providers) as appropriate. Licensee is strictly prohibited from unauthorized use of utilities used, operated or owned by the City. Licensee shall also be responsible for its own internet/network connection and phone services at the Licensed Premises.

**10.2 (a)** The City shall be responsible for the following utility costs associated with the operation of the Ice Skating Rink and the Pool at the Licensed Premises: electricity, gas, and water. However, the City shall not be responsible for any utility costs for services provided by Sublicensee(s), if any. With Parks prior approval, Sublicensee(s) may be required to install a dedicated meter and/or submeter for its utility usage.

**(b)** Parks shall provide and supervise a licensed stationary engineer at the Licensed Premises and Licensee shall reimburse Parks for the actual, costs to Parks of providing said stationary engineer at the Licensed Premises within thirty (30) days following receipt of an invoice therefor. The licensed stationary engineer shall report directly to Parks’ Chief Engineer (also known as the Senior Stationary Engineer) and staff the compressor rooms and operate same in accordance with New York City Fire Department regulations and Parks’ guidelines at the Licensed Premises. In the event of Licensee’s disagreement with Parks’ Chief Engineer as to the function of the stationary engineer, Licensee shall immediately contact the Revenue Division at (212) 360-1397 and the Revenue Division shall make a reasonable effort to resolve such differences.

**(c)** Licensee, at its sole cost and expense, shall install or cause to be installed and/or upgrade, and maintain all utilities, service lines, conduits, meters, pipes, and supplies of power necessary for the proper operation of this License. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other Federal, State or City agencies or entities as have jurisdiction over the construction and operation of the Premises. Licensee shall remove any unsuitable existing materials as required by applicable governmental authorities. Licensee shall comply with all

Department of Environmental Protection (“DEP”) directives and restrictions during the Term. Parks does not make representation or warranty that there are adequate utilities currently in place at the Licensed Premises or that any entity can or will make such service available.

## **XI. PROGRAMMING, EVENTS & PERMITS**

### **11.1 Programming**

(a) Subject to the Commissioner or the Commissioner’s designee’s prior written reasonable approval, the Licensee, as part of its mission, during approved hours shall provide supervised recreational, educational and/or cultural programs at the Licensed Premises to the general public similar to the programs described in Exhibit D in areas such as horticulture, education, athletics, maintenance, tours, food, products, programs, and concerts. Unless specifically approved by the Commissioner, these services or programs may not be revenue generating; provided, however, that where appropriate, the Licensee may receive donations for such services or programming. Licensee is solely responsible for the coordination of Licensee’s public and/or private events.

(b) All aspects of these programs must comply with Parks’ Rules and Regulations, including, but not limited to obtaining 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 (“DOH”) permits and Fire Department (“FDNY”) permits.

(c) Any sound or music equipment at the Licensed Premises shall be operated according to Title 56 RCNY §1-05(d), the Administrative Code of City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner or Commissioner’s designee. Licensee must make every effort to ensure that all sounds and music from its operation are in such a manner to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by the City noise regulations.

(d) 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.

(e) Licensee must account for any funds from services and programming at the Licensed Premises in accordance with Article 5 (Revenue) of this Agreement.

### **11.2 Events**

Licensee and Parks acknowledge and agree that the main purpose of the Licensed Premises is to provide recreational opportunities and programming for the benefit of the public and in no way intend for the Licensed Premises to be a private event space. Notwithstanding the foregoing, the Parties agree that a limited number of events may occur on the Licensed Premises pursuant to the following guidelines below:

(a) Any private function at the Licensed Premises which will result in closing any portion of the Licensed Premises during regular hours of operation, including, but not limited to,

the reservation of the Licensed Premises through Licensee by third parties, or the use of the Licensed Premises by Licensee to hold fund-raisers to benefit the Licensed Premises and/or Licensee's other efforts to support Central Park, or supporter appreciation events, shall be defined as a special event ("Special Event"). Subject to Parks' prior written approval, which shall not be unreasonably delayed, Licensee is permitted to use portions of the Licensed Premises during times when public events are not scheduled for eight (8) Special 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, provided that the Commissioner can authorize the Licensee to hold more than eight (8) Special Events annually. Such events will be limited to traditional functions, such as fundraising and supporter appreciation events. Licensee shall use its best efforts to provide Parks with no less than sixty (60) days (or such lesser period as may be acceptable) prior written notice of any such events. Parks must specifically approve such Special Events and approve any closure of the Licensed Premises during public hours of use, which Licensee must announce to the general-public at least two (2) weeks in advance of such activities or events by posting notification of such closure at the Licensed Premises.

(b) Provided that such Special Events are for the purpose of raising funds to benefit the Licensed Premises, donations and proceeds collected from such events must be used for the Licensee's operation, management, maintenance, and programming at the Licensed Premises. Licensee must account for any funds from such events at the Licensed Premises under Article 5 (Revenue) of this Agreement.

(c) Licensee is solely responsible for the coordination of Special Events.

(d) Licensee shall be responsible for providing or causing there to be provided appropriate security for all Special Events at the Licensed Premises.

(e) At no time can Licensee schedule Special Event during the Pool Season.

(f) Parks shall use reasonable efforts not to interfere with Special Events at the Licensed Premises.

### **11.3 Permits – Licensee**

Licensee or Licensee's Sublicensee, must obtain a Parks' permit for any:

(a) Event or activity where attendance will be over twenty (20) people; and

(b) Special Events. Licensee shall use reasonable effort 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 Special Event.

It is understood and agreed that the use of the Ice-Skating Rink for league play, and for public events where the Licensed Premises will not be closed to the public will not be subject to the requirement to obtain a Parks' permit.

### **11.4 Permits – PARKS**

(a) In addition to Licensee's services and programming described in Article 12 below, Parks reserves the right to schedule and/or conduct a limited number of events at the

Licensed Premises, alone, in conjunction with co-sponsors, or provide permits directly to a third party, including but not limited to concerts, fairs and festivals (hereinafter, a “Parks Event”).

(b) In scheduling Parks Events, Parks will seek to minimize the time that the Licensed Premises is closed to the public during hours of operation at the Licensed Premises.

(c) Parks shall consult with Licensee and the Parties shall mutually agree with respect to the scheduling of a Parks Event at the Licensed Premises. Parks shall use reasonable efforts to provide the Licensee with no less than sixty (60) days (or lesser period as shall be acceptable by the Licensee) prior written notice of any proposed Parks Event.

(d) Parks will be responsible for all maintenance and clean-up associated with any such Parks Event. To the extent that Parks is requiring any third parties holding or co-sponsoring such Parks Events to purchase insurance for said Parks Events, the insurance shall name the Licensee and the City as additional insured parties, and Parks may require such third parties to post a clean-up and restoration bond to ensure clean-up and restoration of Licensed Premises. Parks shall be responsible for any damage to the Licensed Premises relating to any Parks Event.

(e) 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 such permits shall be acceptable to Parks in consultation with Licensee.

## **XII. OPERATIONS**

**12.1 (a)** Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public, subject to the terms and conditions of this License, and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate at the Licensed Premises as set forth herein and only when Central Park is open. All hours of operation are subject to Parks’ prior reasonable written approval. All services, menu items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License must also be approved in advance in writing by Parks. Annexed hereto as Exhibit D is the Schedule of Approved Hours and Rates, Fees and Prices, Menu and Proposed Services for the commencement of operations hereunder. At its reasonable discretion, but based upon written request from Licensee, Parks may allow changes to Licensee’s approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations of Licensee under the License Agreement.

(b) Licensee shall obtain any and all necessary approvals, permits, and licenses for the construction and lawful operation of the Licensed Premises. Licensee shall also comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises. Notwithstanding the foregoing, Licensee shall not be responsible for approvals, permits and other licenses required by Federal, State and City laws, rules, regulations, and orders to the extent they specifically relate to the operation of the Pool, which is Parks’ responsibility.



(c) During the Pool Season, Licensee shall cooperate with Parks to facilitate for the set up and takedown of the Pool and splash pad areas for the benefit of the public. Parks shall provide in its sole judgment all required lifeguard supervision and security personnel for the operation of the Pool and splash pad during the Pool Season, as well as all lifesaving and safety equipment pursuant to Article 165.17 of the New York City Health Code and all other applicable federal, state and City laws, rules and regulations. Parks shall in its sole judgment supply and deploy all Pool chemicals and shall have unrestricted access to the filter plant room during the Pool Season. Licensee shall not be responsible to secure and winterize the Pool and related equipment at the conclusion of the Pool Season.

(d) Except as specifically set forth herein with respect to Pool operations, Licensee shall provide all equipment necessary for the operation of the Licensed Premises, which for the Ice Skating Rink may include, but is not limited to, dasher boards, ice making equipment, headers, coils, benches, an ice rink refrigeration system, ice mats, a Zamboni or other equivalent ice resurfacing machine, lighting, rubber flooring, and other support and expendable equipment during the Ice Rink Seasons.

(e) Licensee shall be responsible for all startup and close-down activities associated with the Ice-Skating Rink and the Pool at the beginning and end of each Ice-Rink and Pool Season.

(f) Licensee, at its sole cost and expense, shall perform, or cause to be performed, all work required to transition the Facility between seasons and prepare the Licensed Premises for seasonal activities, including, but not limited to:

- (i) Installation, removal, and storage of the ice rink, including any and all related appurtenances (barriers, dasher boards, netting, rink lighting, etc.);
- (ii) Installation/removal of the skating ribbon (including installation of synthetic ice, removal and storage of benches, etc.);
- (iii) Installation, removal, and storage of all seasonal barriers, railings, fencing, furnishings, and signage;
- (iv) Melting the ice and properly draining all wastewater and disposal of any melted ice paint in accordance with all local and state regulations including but not limited to DEC, DEP, and Parks;
- (v) Performing necessary repairs and maintenance of the drainage pipes and rink slab;
- (vi) Conversion of staff and concession spaces for designated seasonal uses; and
- (vii) Transition and startup operation of heating and cooling systems.

(g) Licensee must operate a pro shop which shall include a well-stocked skate rental and sharpening/repair facility at the Licensed Premises. Licensee may also sell skate related merchandise and other Park-related gifts and merchandise at the pro shop. The location of the pro shop is depicted on the attached Exhibit A. All equipment to be rented at the pro shop and the proposed prices of those items are subject to Parks' prior, written approval. Licensee shall provide adaptive ADA ice sleds at no additional cost to customers who may request them.

Licensee shall have a minimum of one (1) adult and one (1) child adaptive ADA ice sled available.

**(h)** Intentionally omitted.

**(i)** Licensee shall operate and maintain during the Ice Skating Season, a properly licensed and well-stocked food service facility, which may be in the form of a snack bar and/or Mobile Food Unit, at the Licensed Premises. Such food service facility must be of a high standard of quality. The location of the food service facility is depicted on the attached Exhibit A. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages.

**(j)** During the Flex/Shoulder Season, Licensee may use the Licensed Premises for additional recreational activity and/or programming consistent with the types of programming currently being offered by Licensee in Central Park, subject to Parks prior written approval.

**(k)** Licensee, upon Parks prior written approval, may operate seasonal and/or year-round Mobile Units within the Licensed Premises to provide food service, merchandise, and/or equipment rentals. Exact numbers and location of the Mobile Units are subject to Parks approval.

**(l)** Licensee acknowledges that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee will be required to purchase merchandise from authorized licensees of the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products for non-park-related events. Notwithstanding the foregoing, Licensee shall be permitted to sell event-related merchandise through third-parties at Licensee's Special Events, subject to Parks' prior written approval.

**(m)** The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement.

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

**(o)** The sale and/or service of alcohol at the Licensed Premises is strictly prohibited. Notwithstanding the foregoing prohibition, Licensee may provide or sell alcoholic beverages during Licensee's Special Events either pursuant to a single event license or permit or under a seasonal / annual license issued, in each case, upon the Commissioner's prior written approval. All efforts must be made by Licensee to keep alcohol consumption discrete. Licensee must keep in mind that the Licensed Premises is in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

**(p)** Any staff assigned by Licensee to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate Department of Health and Mental Hygiene ("DOHMH") permits. Licensee may only provide food service at the Licensed Premises if it has obtained the appropriate, valid permits and authorizations required by DOHMH. At all times that any of the food service

operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler's license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise. If Licensee uses Mobile Food Units for the sale of food and/or beverages, Licensee shall obtain a DOHMH Vendor License for each person designated as an operator of a Mobile Food Unit and a DOHMH Mobile Food Vending Unit Permit for its Mobile Food Unit(s). Licensee must submit both a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit to Parks before the operation of its Mobile Food Unit(s) can commence. During the Term, if Licensee operates a Mobile Food Unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Licensee will be instructed to cease operations and will be subject to fines. When warranted and pursuant to law, ordinance or regulation, Officers of the Parks Enforcement Police (PEP), New York City Police Department, New York Fire Department and DOHMH may confiscate the Mobile Food Unit(s), including merchandise.

(q) Licensee may place temporary furnishings, such as tables, chairs, umbrellas, benches, and bleachers, tents, canopies, and other temporary structures at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, benches, bleachers, and other temporary structures, and food service equipment, are subject to Parks' prior written approval. Licensee, at its sole expense, shall be responsible for the annual installation, removal, storage, obtaining and maintaining all required permits for any temporary furnishings. During the Ice Rink Season and the Flex/Shoulder Season, Licensee must ensure free and open public access to outdoor seating areas unless the transition between seasonal use renders such access and seating impractical.

**12.2** (a) Smoking of any tobacco product or non-tobacco smoking product or electronic cigarettes anywhere on the Licensed Premises is strictly prohibited.

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

(c) Licensee is prohibited from selling any beverages in glass bottles. All beverages shall be in non-glass, shatter-proof containers. Single-use plastic beverage bottles, as defined in New York City Mayoral Executive Order 54, are prohibited in the operation of the Licensed Premises.

(d) Licensee shall adhere to and enforce the prohibitions contained in this Section 12.2.

**12.3** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Notwithstanding the foregoing, Licensee shall not be responsible for approvals, permits and other licenses required by Federal, State and City laws, rules, regulations, and orders to the extent they specifically relate to the operation of the Pool, which is Parks' responsibility. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee

shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from the DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations hereunder. However, if in such situation, Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection. Nothing in this Section 12.3 shall limit Licensee's obligation to make any payments due under this License Agreement. Licensee shall obtain a Temporary Certificate of Occupancy and/or Temporary Public Assembly Certificate for the installation and operation of temporary structures during the Term, as required by DOB.

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

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

**12.6** An officer or member of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever reasonably requested by Commissioner.

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

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

- (i) collecting and safeguarding all monies generated under this License;
- (ii) maintaining the Licensed Premises;
- (iii) conducting and supervising all activities to be conducted at the Licensed Premises; and

**(iv) Securing the Licensed Premises.**

**(b)** For purposes of this subparagraph, the word “personnel” means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with children. Licensee agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel including:

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

**(A)** substantiating credentials; and

**(B)** conducting reference checks.

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

**(A)** provide the names of references;

**(B)** provide documentation of credentials;

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

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

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

**(A)** Who, to the Licensee’s knowledge, have not completely and truthfully reported information concerning their criminal convictions as required by § 296 of the New York State Executive Law and § 8-107 of the Administrative Code of the City of New York as outlined in Background Checks Rider;

**(B)** 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,

**(C)** 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.

**12.9** The Licensee shall also comply with all New York City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Such accessibility shall be clearly indicated by signs and included in advertising by Licensee, as appropriate. Licensee shall include in its advertising and promotion program, described in Section 15 below, a plan which describes how

it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

**12.10** Pursuant to a plan reasonably approved by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises during the Term and shall provide for a twenty-four hour per day security system at the Licensed Premises in accordance with plans that have received the prior written approval of Parks. Licensee shall secure the Licensed Premises and any equipment every evening before closing for the day during the Term. Notwithstanding the foregoing, Licensee shall not be responsible for providing security at the Licensed Premises during the operating hours that the Pool is open for public swimming.

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

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

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

**12.14** Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a manner consistent with a typical high-quality public ice skating rink, or in an otherwise unsatisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within thirty (30) days, subject to Unavoidable Delays, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and condition as appropriate.

**12.16** Licensee shall maintain or cause to be maintained, at its sole cost and expense, the public restrooms within the Licensed Premises year-round. Maintenance of the public restrooms includes, but not limited to, regular clean up, restocking of toilet papers and liquid hand soaps, and conduct necessary repairs. Hours of operation for the public restroom shall be as set forth in Exhibit D. Additionally, Licensee must designate an employee with responsibility over public restroom maintenance. The designated employee must not handle food items or be involved with food preparation.

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

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

**12.19** 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. If the Licensee fails to provide the cleaning, maintenance, and operational services required by the License Agreement, Parks shall notify the Licensee in writing, and the Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Licensee fails to cure the violation within the timeframe set forth in the notice Parks may, at its option, in addition to any other remedies available to it, require Licensee to pay Parks as liquidated damages Five Hundred Dollars (\$500.00) per day from the date of the notice, with respect to each violation of the License, until the shortcomings have been corrected.

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

**1. Filing an Appeal**

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

**2. Adjudication of Appeal**

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

**12.20** Licensee recognizes that this License Agreement does not grant Licensee exclusive rights to sell in the park in which the Licensed Premises are located. Moreover, Parks may grant other licenses or permits to vendors to sell the same or similar items authorized under this License Agreement within the same park as that in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages Licensee to report illegal vendors by calling 311.

**12.21** Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense, will be responsible for the storage of all seasonal or temporary structures, lighting, and other support and expendable equipment when not in use, except for Parks' Pool-related equipment. Licensee will dedicate secure space(s) within the Licensed Premises for Parks' storage of Pool-related equipment during the Pool Season, and the parties will work together to try to identify space(s) within the Licensed Premises for certain Pool-related equipment for off-season storage. Additionally, Licensee, at its sole expense, will be responsible for the off-season storage of all Ice-Skating Rink equipment, which may include, but is not limited to, ancillary items to make and maintain ice, Zamboni or other equivalent ice resurfacing machine, rubber flooring, and other support and expendable equipment. Licensee shall also be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior, written approval. Licensee will be required to secure all outdoor equipment (e.g., tables and chairs) on a nightly basis and anytime the Licensed Premises is closed.

**12.22** Licensee is responsible for providing safe lighting throughout the Licensed Premises. Licensee shall replace lamps after lamp outages within ten (10) days of the reported outage, except for B-pole lights which are the property and responsibility of the NYC Department of Transportation.

**12.23** Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession granted hereby. Parks reserves the right to require that all staff wear uniforms that have been reasonably approved in



writing by Parks. Licensee shall provide no fewer than three skate guards wearing clean and clearly recognizable uniforms of a design to be reasonably approved by the Commissioner at the Ice-Skating Rink during all hours that the Ice-Skating Rink is open to the public.

**12.24** Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved by Parks. A cabaret license will be strictly prohibited at the Licensed Premises. Outdoor amplified sound will not be permitted past 10 pm. Any musical programming or other types of entertainment must be approved by Parks.

**12.25** Licensee may, with Parks' prior written approval, install or have installed such number of vending machines at the Licensed Premises as Parks shall approve. In the event that Parks authorizes Licensee to place vending machines at the Licensed Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as Exhibits E-1 and E-2 respectively, which apply to all beverage vending machines located on City property, for the entire Term. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and/or food standards may be changed during the Term of the License. In the event that Licensee installs vending machines on the Licensed Premises, the Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of all vending machines at the Licensed Premises. If Licensee fails to comply with any new and/or changed food or beverage standards, as directed by Parks, following notice from Parks and a reasonable opportunity to cure, Licensee shall remove any vending machines on the Licensed Premises.

**12.26** Licensee must observe applicable vehicle and traffic regulations, and adhere to instructions from NYPD, DOT, and Parks. Licensee is not permitted to operate vehicles on pedestrian pathways without Parks' prior written approval. Licensee acknowledges the following with respect to vehicles and vehicle access to the License Premises: The use of vehicles is restricted within Central Park and Licensee may only access Park roadways to pick-up or deliver items essential to the operation of their concession. Personal vehicles are not allowed on any Central Park drive without Parks' prior written approval. Available entrances and exits to Central Park may be impacted. The maximum speed limit on Central Park drives is 15 miles per hour (MPH) but may be subject to change. Motorists should reduce speed and exercise extreme caution when park drives are congested, and vehicles must travel only in the marked vehicle lane. Drivers must always yield to pedestrians and cyclists and turn on hazard lights when operating in the park.

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

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

**13.1** Licensee shall comply with the rating standards for all applicable enumerated categories described in Parks Inspection Program Manual (“PIP”), attached in Exhibit B, to the extent such standards and categories apply to those areas of the Licensed Premises that the Licensee is responsible for pursuant to this License.

**13.2** Licensee shall, at its sole cost and expense (or through arrangements with third parties), operate and maintain the Licensed Premises in good and safe condition and in accordance with industry standards during the Term. This includes, but is not limited to:

- (a) Cleaning.**
  - (i)** Keeping the Licensed Premises neat and clean, free of dirt, trash, debris, and obstructions; and
  - (ii)** Maintaining all walkways, sidewalks, and all other improvements and facilities on the Licensed Premises; and
  - (iii)** Regularly removing or painting over any and all graffiti that may appear on buildings and structures, as appropriate to the nature of the surface. Such graffiti removal shall be commenced within 24 hours after the appearance of any such graffiti and shall continue until such graffiti is removed and
  - (iv)** Clearing drains, sewers, and catch basin on a regular basis to prevent clogging.
  - (v)** Conducting regular pest control inspections and extermination, as needed. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.
- (b) Snow Removal.**
  - (i)** Snow and ice shall be removed from all walkways and paved surfaces within a reasonable period of time after each snowfall or accumulation of ice, so as not to interfere with safe passage. Sand shall be spread as needed.
- (c) Intentionally omitted.**
- (d) Ice-Skating Rink and Swimming Pool Maintenance.**
  - (i)** Maintaining and repairing any mechanical equipment related to the operation of the Ice-Skating Rink and the Pool (i.e. refrigeration, ice melting equipment, ice resurfacer; pump, filtration, drainage, and pool lifts).
- (e) Other Maintenance.**

- (i) Replacing broken or missing bench slats and paint benches, except for those on sidewalks, as needed; and
- (ii) Keeping all paved surfaces in a safe and attractive condition. To the extent feasible, replacement materials shall match existing materials; and
- (iii) Maintaining all equipment, and areas of the Licensed Premises in good condition and good working order at all times; and
- (iv) Painting all items with painted surfaces as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color; and
- (v) Keeping all signs and structure in good condition; and
- (vi) Providing, at Licensee's sole cost and expense, custom or non-standard materials, such as board slats for custom-made benches, as required and where applicable for the completion of such repairs; and
- (vii) Fabricating and installing all signage required in and around the Licensed Premises.

**13.3** 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. Should the Commissioner, in the Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, then Licensee, after written notification, 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. If such unsafe or emergency condition cannot be remedied within the specified time frame, then Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in the Commissioner's sole discretion, may extend such period of time in order to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld, conditioned or delayed.

**13.4** Except as specifically set forth herein, Parks shall not be subjected to and/or is liable for any unforeseen expenses related to maintenance and repair of the Licensed Premises unless the Parties expressly agreed upon in writing.

**13.5** For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with State Department of Environmental Conservation ("DEC") and register such tanks with the DEP. Licensee shall assume all registration and update costs. Licensee shall keep a copy of the PBS Certificate on site and provide copies to Parks 5-Boro Office on Randalls Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks.

**13.6** Licensee shall make reasonable efforts to use “Green Seal” eco-friendly cleaning supplies and soaps and recycled paper products.

#### **XIV. SIGNAGE**

**14.1** The placement and design of all signage, including Licensee’s name, trade name(s), and/or logo(s), are subject to Parks’ prior written approval, Licensee shall be permitted to install signage in accordance with naming rights associated with the Licensed Premises, as set forth in Section 1.5 above, subject to Parks prior written approval.

**14.2** Licensee may display signs needed to guide and inform the public as to the location and hours of operation at the Licensed Premises as well as to inform the public that the Licensed Premises is under CPC’s stewardship. Licensee will consult with Parks in developing language for signage at the Licensed Premises concerning the transition to and from Ice Rink and Pool Seasons and coordinate with Parks on any edits and subsequent installation of the signs. Signs shall be maintained in good condition and repair, and shall also include the Parks’ logo and following the design guidelines set by Parks, unless otherwise approved in writing by Parks and may indicate that the Licensee in cooperation with Parks maintains the Licensed Premises.

**14.3** Licensee may post signs throughout the Licensed Premises to direct patrons to services and facilities. The signs shall include the necessary wording and arrows to appropriately 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 design and content of all such signs, whether on or off Parks’ property, are subject to Commissioner’s prior written approval, which shall not be unreasonably withheld, conditioned, or delayed.

**14.4** 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 Licensed Premises’ history).

**14.5** 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 Commissioner’s designee’s written approval. Signage at the entrances will acknowledge Parks, and elsewhere where mutually agreed by the Licensee and the Commissioner or Commissioner’s designee. Such signage shall conform to the following requirements:

- (a) Include Central Park Conservancy name;
- (b) Include Central Park Conservancy logo (which may change from time to time);
- (c) Intentionally omitted.
- (d) Locations of signage is subject to prior written approval by the Commissioner;
- (e) Design of all signage is subject to Parks’ prior written approval.

## **XV. SPONSORSHIP AGREEMENTS, PUBLICATIONS, ADVERTISING, AND PUBLICITY**

**15.1** Licensee must obtain Parks' prior written approval before entering into any marketing or sponsorship agreement regarding the Licensed Premises, and must account for any funds from these agreements under Article 5 (Revenue) of this Agreement. If Licensee breaches this provision, the City shall take any action that the City may deem necessary to protect the City's interests.

**15.2** All advertising utilized at the Licensed Premises is subject to Parks' prior written reasonable approval. Licensee shall not advertise any product brands without Parks' prior written reasonable approval. Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display, placement or promotion of any tobacco products, non-tobacco smoking products, or electronic cigarettes and alcoholic beverage advertising shall be prohibited. Licensee shall not accept sponsorships of any kind for the Licensed Premises on behalf of any tobacco products, non-tobacco smoking products, or electronic cigarettes and alcoholic beverage. Licensee shall follow and enforce these policies.

The following standards will apply to any allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense. Licensee is prohibited from placing advertisements on the exterior of the Licensed Premises. Additionally, Licensee shall seek Parks' prior approval for the display on the dasher board.

**15.3** Licensee may establish a program of activities in the Licensed Premises, subject to Parks' reasonable prior approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing promotional matter for these programs and sponsorship acknowledgments, except promotional matter and sponsorship acknowledgments which in the Commissioner's sole discretion are indecent, in obvious bad taste, which demonstrate a lack of respect for public morals or conduct, or adversely affect the reputation of the Licensed Premises, Parks, or the City. The Commissioner or Commissioner's designee shall have prior approval as to design and distribution of all promotional materials and sponsorship acknowledgments.

**15.4 (a)** To assure public awareness of the Licensed Premises and its programs, Licensee shall make good faith efforts to provide notice to the public about the opportunity to participate in the programs offered at the Licensed Premises. Good faith efforts may 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 prior approval for any advertisement or promotional material concerning the Licensed Premises.

**(b)** 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 reasonably directed by the Commissioner or Commissioner's designee.

## **XVI. USE OF NAME & LOGO**

**16.1 (a)** Except as described in subparagraph (b) below, all intellectual property rights in the Licensed Premises' name, signage, structures, historical location, monuments, or other items or materials 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 the City's behalf, 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 City IP. To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Licensee Activities"), Licensee shall obtain Parks' prior written permission and approval for this use. In the event that Parks grants permission for the Licensee to use the City IP for non-commercial purposes, then Parks grants and will grant a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to Licensee to make non-commercial use of, display and maintain City IP for the Licensee's Activities in support of the Licensed Premises. To the extent that Parks' prior permission and approval had already been obtained to use City IP, it will be continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (a).

**(b)** Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property **(i)** was created by or on Licensee's behalf, its employees, contractors, or others, other than at the City or Parks' specific direction, and **(ii)** includes no City IP (as defined in subparagraph (a) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee's 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 Agreement exclusively in connection with Licensee Activities, but this restriction shall terminate on the expiration or termination of this Agreement. Licensee in this Agreement grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable 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 Licensee's prior written approval.

**(c)** 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 Specific 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 if 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. If 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, before exercising the right of termination provided for in this subparagraph (c), shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(d) During the Term, 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.

(e) The Parties will not use the name 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 or delayed.

(f) All provisions of this Article 16 will survive any termination of this Agreement except as otherwise set forth in this Article.

## **XVII. INFRINGEMENT**

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

## **XVIII. PARKS' RESERVATION OF RIGHTS & INTERESTS**

**18.1 Public Events:** The parties to this License will use their best efforts to provide no less than thirty (30) day written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

**18.2 Public Communications:** In any statement or release made to the public relating to the subject of this License, Licensee will, where appropriate acknowledge Parks' involvement. If the Commissioner or Commissioner's designee finds that any release, advertisement or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, Licensee and the Commissioner or Commissioner's designee agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

**18.3 Publications:** If Licensee publishes a work discussing any aspect of performance of any service covered by this Agreement, Licensee will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use and authorize others to use such publication.

## **XIX. PROHIBITIONS OF 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 Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

**19.2 No Combustibles and Inflammables:** Except for properly stored fuels or other properly stored solvents necessary for the maintenance and operation of the Licensed Premises, 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** Licensee shall not use or grant permission to others to use the Licensed Premises, or any portion, for any unlawful purpose or in violation of any existing certificate of occupancy or the provisions on the use of the Licensed Premises as set forth in this License.

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

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

**(b)** No assignment of this License by the Licensee, in whole or in part, will be effective unless it is agreed to, in writing, by Parks and signed by a duly authorized representative of Parks.

**20.2 (a)** Any Sublicense, which is authorized under this Agreement, shall be subject and subordinate to the terms and conditions of this License and Licensee shall require its Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by its terms. All provisions of this License applicable to Licensee with respect to the operation, management and maintenance of the Licensed Premises shall be equally applicable to any Sublicensee.

**(b)** Licensee shall require any Sublicensee to agree in writing that it will comply with the directives and provisions of this License that are applicable to Licensee with respect to the operation, management and maintenance of the Licensed Premises, including, but not limited to, obtaining the required insurance coverages in Article 26 and indemnification in Article 25 of this Agreement, and shall be responsible for assuring such compliance.

**(c)** If any Sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that Sublicensee's operations. No Sublicense may be



assigned without the Parks' prior written consent. Any subsequent Sublicense Agreement(s) will be subject to the terms and conditions in this License.

**20.3** No consent to or approval of any assignment or sublicense granted pursuant to this Article 20 shall constitute consent to or approval of any subsequent assignment or sublicense.

## **XXI. PARKS CONSTRUCTION**

**21.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term or when work is reasonably necessary to be performed during the Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least thirty (30) days' notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event of full or partial closure of the Licensed Premises or suspension of Licensee's operations at the Licensed Premises, as provided for herein; however, Parks shall be solely responsible for claims, damages, or injury resulting from such work, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

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

## **XXII. COMPLIANCE WITH LAWS**

**22.1** Licensee shall comply 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 as set forth in 56 RCNY § 1-01 et seq., 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.

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

### **XXIII. NON-DISCRIMINATION**

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

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

### **XXIV. NO WAIVER OF RIGHTS**

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

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

#### **25.1 Licensee Responsibility.**

(a) Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, sublicensees, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its sublicensees, contractors or subcontractors.

(b) Except as otherwise provided in this License, Licensee shall be solely responsible for taking, or causing to be taken, 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, except as otherwise provided in this License.

(c) Except as otherwise provided in this License, Licensee shall be solely responsible for claims arising from injuries to any and all persons, including death, and damage to any and all property arising out of or related to Licensee's operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person.

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts,

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

## **25.2 Indemnification and City's Obligations.**

(a) Except for liabilities, obligations, damages or expenses arising out of or in connection to (1) the operation and management of all or a portion of the Licensed Premises by a third-party operator or subcontractor; (2) the Licensee's operations at the Licensed Premises connected to the operation and maintenance of the Ice Skating Rink; and/or (3) Licensee's fee-based programs/services and revenue generating activities at the Licensed Premises (collectively "Excluded Claims"), the City agrees to indemnify and hold harmless the Licensee, its officers, board members, trustees, employees, and volunteers from and against any and all liabilities, obligations, damages and expenses arising from such other maintenance services performed and activities conducted by Licensee at the Licensed Premises, pursuant to this License including without limitation any and all liabilities, damages and expenses in connection with injuries suffered by persons visiting or working on the Licensed Premises. Notwithstanding the foregoing, the City's obligation to indemnify and hold harmless the Licensee, its officers, board members, trustees, employees, and volunteers shall not apply to:

(i) (1) any liability, obligation, damage or expense which arises from or in connection with the gross negligence or intentional tortious acts or omissions of the Licensee, its officers, board members, employees, or volunteers, or (2) any liability, obligation, damage or expense which arises from or in connection with any claim or legal proceeding against the City by an employee or volunteer of Licensee in connection with his or her employment or engagement with Licensee, or (3) Excluded Claims, including such Excluded Claims covered by Licensee's Commercial General Liability Insurance or other insurance required under this Agreement, whether or not insurance is actually maintained.

(ii) In the event of any claim or legal proceeding against the City by an employee or volunteer of the Licensee in connection with the terms of his or her employment or engagement, the Licensee shall defend, indemnify and hold harmless the City, its officers, employees and agents from and against any and all liabilities, obligations, damages and expenses arising out of or in connection with the negligence or intentional or willful wrongful acts or omissions of the Licensee, its officers, board members, employees, volunteers or agents.

(b) In the event that a claim arises, and indemnification is sought by the Licensee pursuant to this Article, the Licensee shall promptly notify the City of such claim and, if known, the facts constituting the basis for such claim (hereinafter referred to as a "Third Party Claim"), provided, however, that in the event a claim for indemnification arises resulting from or in connection with any claim or legal proceedings by a third party, the Licensee shall give such notice thereof to the City no

later than ten (10) days prior to the time any response to the asserted claim is required, if possible, and provided further, however, that failure to give such reasonably prompt notice shall not release, waive or otherwise affect the City obligations with respect thereto, except to the extent of any loss and prejudice as a result hereof. In the event a Third Party Claim arises, the City may assume the defense of such Third Party Claim if either (1) the defense of the Third Party Claim is tendered to the City by the Licensee and within thirty (30) days thereafter such tender is accepted by the City, or (2) within thirty (30) days after the date on which written notice of a Third Party Claim has been given to the City, the City shall acknowledge in writing to the Licensee and without qualification the City's indemnification obligations as provided in this paragraph. Except as authorized by the City, the Licensee shall not, in such instances, have the right to be represented by counsel at its own expense in any such contest, defense, litigation or settlement conducted by the City. So long as the City has assumed the defense of any Third Party Claim, and is defending such claim in good faith, the City shall have the exclusive right, in its sole discretion, to settle any such claim, either before or after the initiation of litigation, at such time and on such terms as the City deems appropriate, with approval of the Comptroller, as provided in the New York City Charter, provided that such settlement does not impose any obligations on the Licensee. The Licensee also shall not be required to enter into any such settlement that does not include an unconditional release of the Licensee of all liability in response of such claim. If the Licensee is entitled to indemnification against a Third Party Claim, and the City fails to assume the defense of a Third Party Claim pursuant to this paragraph, the Licensee shall have the right, without prejudice to its right of indemnification hereunder, to contest, defend, and litigate such Third Party Claim, provided that the Licensee may not settle such Third Party Claim without the City's prior written consent, such consent not to be unreasonably withheld.

(c) The Licensee, its officers, directors, employees, and volunteers, shall cooperate and assist the City with the review, adjudication and/or settlement of all claims and actions against the Licensee subject to the indemnity obligations outlined in this paragraph. The Licensee shall provide all documents, incident and/or accident reports and such other assistance as is necessary for the formulation and presentation of any defense pursuant to the indemnity obligations outlined in this Article.

(d) Insofar as the facts or law relating to any of the foregoing would preclude Licensee from being completely indemnified by the City to the extent required by Section 25.2(a), Licensee shall be partially indemnified to the greatest extent allowed by law.to the fullest extent permitted by law.

### **25.3 Indemnification and Licensee's Obligations.**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold, or cause to indemnify, defend and hold, the City, and its respective 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 the Excluded Claims (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to

comply with the law or any of the requirements of this License. To the extent any such claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs or expenses are caused by the negligent or intentional tortious acts of the City or its officials and employees, Licensee shall have no obligation to defend, indemnify or hold the City or its officials and employees harmless. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Licensee to the extent otherwise required by the foregoing parts of this section 25.3(a), the City and its officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

## **XXVI. INSURANCE**

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

A. From the date the Notice to Proceed is received through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits, provided they are commercially reasonable if, in the opinion of the Commissioner, Licensee's operations warrant it.

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

### **26.2 Commercial General Liability Insurance**

A. The Licensee shall maintain, or cause to be maintained, Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage and Three Million Dollars (\$3,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Six Million Dollars (\$6,000,000). Licensee shall maintain coverage for products/completed operations in the amount of One Million Dollars (\$1,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of

ISO Form CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee's. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

The Licensee shall maintain, or for workers not directly employed by Licensee, cause to be maintained Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

### **26.4 Commercial Automobile Liability Insurance**

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

### **26.5 Property Insurance**

A. The Licensee shall maintain comprehensive, broad-form property insurance (such as a special causes of loss policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises ("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 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, subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

B. This Section 26.5 does not require coverage for damage caused by flooding.

C. The limit of such property insurance shall be no less than the full Replacement Cost of all 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 Structures.

D. In the event of any loss to any of the 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

Structure that the City owns or in which the City has an interest, the Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner's discretion, allow the City itself to adjust such claim.

## **26.6 Flood Insurance**

A. To the extent the Licensed Premises are located in a high hazard flood zone, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Licensed Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for both the building and its contents. The Licensee shall assure that the City is listed as loss payee on the NFIP insurance.

B. In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as loss payee under all such policies.

## **26.7 Hazardous Materials and Pollution Liability Insurance**

A. In the event the Licensee enters into a contract with another entity 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 Licensed Premises.

B. If required, the Contractors Pollution Liability Insurance shall 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.

C. Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products, asbestos, lead, polychlorinated biphenyls (PCBs) or any other hazardous materials.

## **26.8 Liquor Law Liability Insurance**

In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an

amount not less than Two Million Dollars (\$2,000,000) per occurrence and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

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

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

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

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

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

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



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

#### **26.10 Proof of Insurance**

A. Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to Parks' issuance of a Notice to Proceed.

B. For Workers' Compensation, Employers Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

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

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

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

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

#### **26.11 Miscellaneous**

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

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

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) in accordance with the notice provisions of the applicable 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 as an additional insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

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

## **XXVII. WAIVER OF COMPENSATION**

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

Notwithstanding the foregoing, the Parties shall work in good faith in the event of a "Catastrophic Event" (hereinafter defined). Licensee shall not be obligated for any unforeseen expenses as a result of the Catastrophic Event for repairing and/or rebuilding the Licensed Premises if (a) funds are not included in Licensee's operating budget for the Licensed Premises and (b) funds from insurance coverage is insufficient to cover the cost of the repairing and/or reconstruction effort. Upon the occurrence of a Catastrophic Event, Licensee shall promptly notify the Commissioner of the work that must be done immediately for the clean-up and stabilization of the Licensed Premises needed to ensure public safety and shall not commence any work related to the Catastrophic Event prior to receiving approval from Parks. In the event that for reasons of public safety, Licensee must commence such work prior to obtaining Parks' approval, Licensee shall obtain Parks' approval of such work as soon as reasonably practicable. Within ten (10) days following such Catastrophic Event, or at such later time approved by Parks, Licensee shall provide Parks with a complete scope of work and a proposed budget for the clean-up and stabilization work necessitated for public safety by such Catastrophic Event. A "Catastrophic Event" shall be defined as any type of accident, incident, or event that originates from either natural or man-made causes, or, any extreme weather event (or series of weather events), including, without limitation, lightning storms, tornados, hurricanes, earthquakes, or

severe snow and/or ice storms, that results in significant damage to the Facility within Licensed Premises.

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

## **XXVIII. RETENTION OF RECORDS**

**28.1** Licensee agrees to retain all books, records, and other documents relevant to 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 these materials during this period, upon reasonable prior notice. Notwithstanding the foregoing, the Parties acknowledge and agree that the New York City Comptroller's ("Comptroller") powers, duties and obligations under the Charter shall not be diminished, compromised or abridged in any way.

## **XXIX. INSPECTIONS AND AUDITS**

**29.1** Licensee will make available, upon reasonable prior notice, at its principal place of business, for audit, inspection or removal of copies by NYC Parks, the Comptroller, and a Parks-authorized independent auditor, Licensee's books and records relating to the performance of this Agreement, including, but not limited to, the following:

(a) Revenue and expenditures, annual budget, bi-weekly payroll recap, fringe benefits, books, accounts, canceled checks, and all other fiscal records;

(b) Staff and salary roster, including salary changes and adjustments;

(c) Internal and external audits completed within the last three (3) years;

(d) Minutes of meetings of the Board of Directors;

(e) Programs, research, and other reports and publications in connection with Licensee's responsibilities at the Licensed Premises pursuant to this Agreement; and,

(f) Registration and attendance records of Licensee's sponsored programs and any other matters relating to the performance of and compliance with this Agreement, or with any laws or regulations governing the Licensee's conduct under this Agreement.

**29.2** Licensee will establish and maintain accurate records and accounts, which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this License and any revenue generated pursuant to this Agreement. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

**29.3** Licensee shall use accounting and internal control methods and procedures and keep additional books and records as may be reasonably prescribed by Parks or the Comptroller. Parks or the Comptroller shall have the right to examine Licensee's record keeping

procedures before the commencement of the Term, and at any other subsequent time to assure that the procedures are adequate to reveal the true, correct and entire business conducted by Licensee.

**29.4** Licensee's failure or refusal to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal to maintain adequate internal controls or to keep any of the records required by this Article after receiving Parks or the Comptroller's prior written notice, or the existence of any unexplained discrepancy, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default under this Agreement, which shall entitle Parks, at its option, to terminate this License.

**29.5** Licensee shall make available to the Comptroller, and Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the Comptroller and NYC Parks; provided, however, that Licensee shall not be obligated to make available for examination or copying the identities of Licensee's donors.

**29.6** Notwithstanding the foregoing, the Parties acknowledge and agree that the Comptroller's powers, duties and obligations under the Charter provisions shall not be diminished, compromised or abridged in any way.

### **XXX. INVESTIGATIONS**

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

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

**(ii)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a

City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

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

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 30 (d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 30(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 30(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

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

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

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

**31.2** Any and all claims asserted by or against the City 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 its intent, Licensee agrees:

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

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

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

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

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

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

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

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

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



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

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

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

### **XXXIV. PERSONNEL**

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

**34.2** Notification of Changes in Key Personnel. Licensee will notify Parks in writing within five (5) days after any appointments to or resignations from the position of President, Chief Financial Officer, and other key personnel. In addition, Licensee will notify Parks in writing, within ten (10) days after the occurrence of any change in the individuals who serve as directors and officers of Licensee.

### **XXXV. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

**35.0** Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts. The Federal Employer Identification Number of Licensee is 13-3022855.

## **XXXVI. CONFLICT OF INTEREST**

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

## **XXXVII. PROCUREMENT OF AGREEMENT**

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

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

## **XXXVIII. CLAIMS & ACTIONS THEREON**

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

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

**38.3** If any claim is made or any action brought in any way relating to this Agreement other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall

diligently render to the City without additional compensation any and all assistance which the City may reasonably require of Licensee.

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

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

**XL. ALL LEGAL PROVISIONS DEEMED INCLUDED**

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

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

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

**XLII. JUDICIAL INTERPRETATION**

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

**XLIII. MODIFICATION OF AGREEMENT**

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

**XLIV. NOTICES**

**44.0** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Parks' Assistant

Commissioner for Revenue and Marketing, City of New York Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to the attention of Licensee shall be dispatched in the same manner, and delivered to Licensee at 14 East 60<sup>th</sup> Street, New York, NY 10022, ATTN: Stephen Spinelli, Chief Financial Officer, or such other address as may be notified from time to time, with a copy to Eoghan P. Keenan, Esq., Weil, Gotshal & Manages LLP, 767 Fifth Avenue, New York, NY 10153. All notices and demands under this Agreement shall be in writing.

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

**45.1** Licensee shall use all revenues derived from the Licensee's operations at the Licensed Premises to cover Licensee's costs and/or expenses of maintenance and operations for the Licensed Premises in accordance with this License Agreement. Maintenance and operations shall include, but is not limited to programming, visitor services, and community engagement, but shall not include capital improvements.

**45.2** Licensee makes the following representations and warranties: Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite authority to execute, deliver, and perform this Agreement.

(a) 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.

(b) The execution and delivery of this Agreement, and compliance with the provisions herein, 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 statute order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(c) Licensee has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with procurement of this Agreement

(d) Intentionally omitted.

(e) Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

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

## **XLVI. MISCELLANEOUS**

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

**46.2** Intentionally omitted.

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

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

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

CENTRAL PARK CONSERVANCY,  
INC.

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

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

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

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

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

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

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

STATE OF NEW YORK

ss:

COUNTY OF

On this    day of                      , 2022 before me personally came \_\_\_\_\_  
to me known and who, being duly sworn by me, did depose and say that (s)he is the  
\_\_\_\_\_ of Central Park Conservancy, Inc. and that (s)he was authorized to  
execute the foregoing instrument on behalf of that company and acknowledged that (s)he  
executed the same on behalf of that company for the purposes mentioned therein.

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

**EXHIBIT A**

**Licensed Premises**

Drawings provided to Parks by CPC.



**EXHIBIT B**

**PIP Manual**

## **EXHIBIT C**

### **Payment Guarantee**

I. (A) For purposes of this Exhibit C:

(1) "Contractor" means a person, firm or corporation who or which contracts with the Licensee to furnish and 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 C 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 C as a "party liable for payment" where applicable; and

(2) "Subcontractor" means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, and 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 C as a "party liable for payment" where applicable.

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

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

(2) Materials, equipment, and supplies when valid 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 (such person, firm or corporation 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 C are subject to the limitations and conditions in this Section II and in Sections III and IV of this Exhibit C:

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

(B) Nothing in this Exhibit C 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 first 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 one (1) year after the completion of the applicable 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 C. 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 C, 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 the payment is due and owing to the beneficiary making the demand.

(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 C, 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 pay such amount to the beneficiary within fifteen (15) days after receipt of such direction. In the event the party liable for payment fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within fifteen (15) days after 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 fifteen (15) 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, Licensee shall have no obligation to make payment on such demand pending resolution of the dispute. 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 C 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 C), the payment guarantee made pursuant to this Exhibit C shall be construed in a manner consistent with Section 5 of the New York Lien Law.

## **EXHIBIT D**

### **SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES**

TBD and approved by Parks

#### **PROPOSED PROGRAMS AND SERVICES**

*[Licensee may offer one or more of the following programs at the Licensed Premises]*

##### Educational Programming, including but not limited to:

- Hosting School Groups
- Field Trips
- Educator Workshops
- Discovery Walks
- Sensory Friendly Programming

##### Interpretive Programming, including but not limited to:

- Lectures
- Tours
- Exhibits
- Panel Discussions
- Audio Guide
- Adapted Programs (touch and verbal description, American Sign Language translations, sensory supports, assistive listening devices)

##### Recreational Programming, including but not limited to:

- Learn to skate
- Youth hockey clinics
- Competitive youth hockey
- Adaptive/sled hockey
- Figure skating
- Ice dancing
- Adaptive skating
- Senior skating
- Fitness classes/excerskate
- Curling
- Broomball
- Soccer clinics
- Field hockey
- Other field sports
- Other ice sports
- Other Fitness and Athletic Instruction
- Other adaptive programming

##### General Recreation, including but not limited to:

- Fishing
- Boating/Kayaking
- Community skating on the Meer Boardwalk
- Roller Skating
- Picnicking

Equipment rentals, including but not limited to:

- Ice skates
- Roller skates
- Wheelchairs
- Sporting Equipment (balls, hockey sticks, yoga mats, lawn games, etc.)
- Binoculars
- Discovery Kits / Educational Tools
- Fishing Poles
- Assistive Listening Devices

Cultural Programming, including but not limited to:

- Performing arts
- Visual arts
- Concerts
- Outdoor (free) movies
- Temporary installations
- Storytelling

Community Programming, including but not limited to:

- Hosting civic, school, and family groups
- Volunteer opportunities
- Birding
- Family Programs
- Events

Visitor Center, including but not limited to:

- Maps
- Information
- Brochures
- Flyers
- Signage
- Itineraries

Conservancy Retail

Food and Beverage

## EXHIBIT E-1

New York City  
Food Standards

# BEVERAGE VENDING MACHINES

- 1** Require all beverages contain 25 calories or less per 8 ounces with the following exception:
  - A maximum of 2 slots/buttons may stock high calorie beverages (more than 25 calories per 8 ounces), such as regular soda, lemonade, sweetened tea and juice. The 2 slot limit applies no matter how many slots are in the machine.
  - Unsweetened 1% and non-fat milk not included in high calorie limit.
- 2** Require water be stocked in at least 2 slots/buttons per machine.
  - Water should contain 0 calories with no added color, flavor or sweetener of any kind.
  - If drinking water is readily available in the vicinity of the vending machine, unflavored seltzer water may be substituted for the 2 slots of water.
- 3** Require water and seltzer be placed at eye level, or in the highest selling position. High calorie beverages should be placed farthest from eye level, or in the lowest selling position.
- 4** Require all high calorie beverages are sold in 12 ounce containers or smaller.
- 5** Prohibit advertisements of high calorie beverages on vending machines.
  - Promotional material on the front and side panels of the machine can advertise water or beverages with 25 calories or less per 8 ounces.
- 6** Require calorie information is posted for each beverage, as packaged.
  - Required for City agencies only.

Recommend stock machines with *only* water, seltzer and other low calorie beverages.

Make the healthier choice the cheaper choice. Set lower prices for water and other low calorie beverages than for high calorie beverages.

*Follow these Standards to provide healthier beverage options.*

Organizations, such as hospitals, worksites, and community-based organizations can adopt the Standards to improve the food environment for employees and visitors.

City agencies follow these standards per Executive Order 122.

**Sugar-sweetened beverages are the single biggest contributor to the obesity epidemic.**

# BEVERAGE VENDING MACHINES



Example of a beverage vending machine that meets the standards.

## Standards for programs serving children age 18 and under

- 1** Require all beverages contain 25 calories or less per 8 ounces. For programs serving children age 12 and under, require that all beverages contain 10 calories or less per 8 ounces.
  - Unsweetened 1% and nonfat milk not included.
- 2** Beverages cannot contain artificial sweeteners, other natural non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol), artificial flavors or artificial colors.
- 3** For programs serving children age 12 and under, beverages cannot contain caffeine.
- 4** Prohibit advertisements of high calorie beverages on vending machines.
  - Promotional material on the front and side panels of the machine can advertise water or beverages with 25 calories or less per 8 ounces.
- 5** Require calorie information is posted for each beverage, as packaged.
  - Required for City agencies only.

## Standards for hot beverage machines (e.g. coffee machines)

- 1** Recommend all beverages contain 25 calories or less per 8 ounces.
  - Condiments are not restricted (e.g. milk, sugar, sugar substitutes).
- 2** Recommend all beverages and condiments contain 0 grams trans fat.
- 3** Recommend calorie information is posted for each beverage, as packaged.



## EXHIBIT E-2

New York City  
Food Standards

# FOOD VENDING MACHINES

### Snack Standards

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

**Calories:** no more than 200 calories

**Total fat:** no more than 7 grams

- Nuts, seeds, nut butters and cheese are exempt
- Products containing nuts or nut butters are exempt

**Saturated fat:** no more than 2 grams

- Nuts, seeds, nut butters and cheese are exempt

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 200 mg

- Cottage cheese: no more than 400 mg

**Sugar:** no more than 10 grams

- Fruit and vegetable products with no added sugar are exempt
- Yogurt: no more than 30 grams sugar per 8 ounces

**Fiber:** contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)

**2** Require calorie information is posted for each food item, as packaged.

Required for City agencies only.

**3** For programs serving children age 18 and under: products cannot contain artificial flavors, artificial colors, artificial sweeteners, or other non-nutritive sweeteners (e.g. stevia, erythritol).

**4** Recommend limit grain/potato-based snacks to no more than 50% of food items in machine.

*Follow these Standards to provide healthier food options.*

Organizations, such as hospitals, worksites, and community-based organizations can adopt the Standards to improve the food environment for employees and visitors.

City agencies follow these standards per Executive Order 122.

These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines.

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

For more information, please contact: [nycfoodstandards@health.nyc.gov](mailto:nycfoodstandards@health.nyc.gov)



## Meal Standards

Meal items include salads, sandwiches, burritos, and combination packaged items such as tuna lunch kits. Breakfast breads and pastries must meet the snack standards.

**1** Require each meal meet all of the following criteria:

**Calories:** no more than 700 calories (all items  $\leq$  200 calories must follow snack standards)

**Total fat:** no more than 35% of calories

Salads: no more than 60% of calories

**Saturated fat:** no more than 10% of calories

Salads: no more than 20% of calories

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 800 mg

Soup: no more than 480 mg per 8 ounces

**Sugar:** no more than 35% of calories

**2** Refrigerated machines must stock fresh fruit and vegetable items.

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

Required for City agencies only.

**4** For programs serving children age 18 and under: products cannot contain artificial flavors, artificial colors, artificial sweeteners, or other non-nutritive sweeteners (e.g. stevia, erythritol).

**EXHIBIT F**  
**Paid Sick Leave Rider**

Introduction and General Provisions

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

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

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

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

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any 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 PSL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSL.

#### 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 PSLT may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT G**  
**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.

*Form of Certificate appears on the following page.*



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

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

State of ..... )  
County of ..... ) ss.:

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

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

**EXHIBIT H**  
**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.

# Memo

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

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

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

Alexandre Stamoulis  
Mayor's Office of Contract Services

Gregg Alleyne  
Mayor's Office of Contract Services

Natalie Koepff  
NYC & Company Inc.

**Date:** March 4, 2022

**Re:** Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with The Creative Assembly Limited 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 The Creative Assembly Limited 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-2022-002
<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: The Creative Assembly Limited, LLC. ☐ EIN ☐ SSN #

Attach Memo(s) \*

<p align="center"><b>CONCESSION AGREEMENT TERM</b></p> <p><b>Initial Term:</b> to be negotiated</p> <p><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>
<p><b>LOCATION OF CONCESSION SITE(S)*</b> <input checked="" type="checkbox"/> N/A</p> <p><b>Address</b> _____</p> <p><b>Borough</b> _____ <b>C.B.</b> _____</p> <p><b>Block #</b> _____ <b>Lot #</b> _____</p> <p><small>*Attach additional sheet</small></p>	

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

**> Significant Concession:**

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

**> Major Concession:**

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

**NOTIFICATION REQUIREMENTS**

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

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

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

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

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

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

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

☒ The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in

advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

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

**AUTHORIZED AGENCY STAFF**

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

**Name** \_\_\_\_\_ **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 The Creative Assembly Limited 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 The Creative Assembly Limited.

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

Creative Assembly is one of Europe's leading games development studios, founded in 1987 and located in West Sussex, UK and in Sofia, Bulgaria. Creative Assembly is a craft-led studio with over 34 years' experience in video game development. Creative Assembly have won multiple awards for their culture and their people-centric approach, having won a Best Place to Work Award for five consecutive years. Creative Assembly plans on using some of New York City's IP in a new video game set to be released in the next year. With the current state of travel, it is in the City's best interest to continue to create agreements that continue to put and keep New York City top of mind globally. Creative Assembly's games have global reach, and will be able to have our marks seen in a new way and for the City to enter into a potential revenue stream. For these reasons, it is in the City's best interest begin the process to negotiate a sole source agreement with The Creative Assembly Limited. This proposed non-exclusive license agreement will not bar opportunities for other types of gaming partners.

**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 The Creative Assembly Limited for the non-exclusive use of City-owned trademarks in video games. The Creative Assembly Limited has the ability to create an entire new set of customers and revenue stream for the licensing program. The Creative Assembly Limited will help expand the type of items the City now licenses and will help expand the licensing program beyond souvenirs. Given the popularity of video games and the potential of creating a new source of income 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 April 13, 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.\_2\_)**

**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 The Creative Assembly Limited 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 The Creative Assembly Limited to the FCRC for approval.

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

**April 13, 2022**

Date:

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

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





NYC Parks

David Cerron  
Assistant Commissioner  
Planning & Development

T 212.360.1357

E [david.cerron@parks.nyc.gov](mailto: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. Antonio Reynoso, President of the Borough of Brooklyn  
Mr. Eddie Mark, District Manager, Brooklyn Community Board 13

**FROM:** Phylcia Murray, Project Manager, Revenue Division *PM*

**SUBJECT:** Notice of Joint Public Hearing, April 11, 2022: Intent to award a concession amendment to extend the existing License Agreement between the New York City Department of Parks and City Ice Sports Inc. for the Operation & Management of Abe Stark Ice Skating Rink at Coney Island, Brooklyn. Permit No. B336-A-IS.

**DATE:** March 25, 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 on Monday, April 11, 2022 at Spector Hall, 22 Reade Street, Manhattan, New York, NY 10007, commencing at 2:30 p.m.

INTENT TO AWARD a concession amendment to extend the existing License Agreement between the New York City Department of Parks & Recreation and City Ice Sports Inc. for the Operation & Management of Abe Stark Ice Skating Rink at Coney Island, Brooklyn. Compensation under the second amendment to the License Agreement will be as follows: Licensee shall pay the City license fees for each year, according to the below schedule.

#### Operating Years 17-20: October 1, 2022 to April 30, 2026

<u>DUE DATE</u>	<u>AMOUNT</u>	<u>% FEE</u>
Any applicable payment is due to Parks within 30 days of the end of the Operating Season.	Percentage of Gross Receipts, if applicable.	If Licensee's Gross Receipts in any Operating Year exceed \$500,000, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$500,000:
		25% of Admission Fees
		25% of Ice Skate Rental Fees
		15% of Ice Rental Fees
		2% of Net Vending Sales



		10% of Net Ice Skate Instruction Fees
		30% of All Other Revenue

**Restored Time: October 1, 2026-April 30, 2027**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
Any applicable payment is due to Parks within 30 days of the end of the Operating Season.	Percentage of Gross Receipts, if applicable.	If Licensee's Gross Receipts during this period exceed \$325,000.00, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$325,000:
		25% of Admission Fees
		25% of Ice Skate Rental Fees
		15% of Ice Rental Fees
		2% of Net Vending Sales
		10% of Net Ice Skate Instruction Fees
		30% of All Other Revenue

Written testimony may be submitted in advance of the hearing electronically to [fcrc@mocs.nyc.gov](mailto:fcrc@mocs.nyc.gov). All written testimony must be received by April 4, 2022.

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 **April 1, 2022** through **April 11, 2022**.
- 2) Download from **April 1, 2022** through **April 11, 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 **April 1, 2022**. For mail-in requests, please include your name, return address, and License # B336-A-IS

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> New York City Department of Parks & Recreation ("Parks")	<b>RECOMMENDED CONCESSIONAIRE</b> Name: <u>City Ice Sports Inc.</u> Address: <u>89 Lincoln Street Staten Island, NY 10314</u> Telephone # <u>917-921-4213</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>13-3546028</u> Not-for-Profit Organization <span style="float:right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> Certified by DSBS as M/WBE <span style="float:right;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Amendment to the existing license agreement with City Ice Sports, Inc. for the operation, and management of the Abe Stark Ice Rink in Coney Island, Brooklyn.</u> CONCESSION I.D. # <u>B336-A-IS</u>
<b># VOTES required for proposed action</b> = 4 <span style="margin-left: 20px;"><input type="checkbox"/> N/A</span>		
<b>LOCATION OF CONCESSION SITE(S*)</b> Address <u>Abe Stark Rink Brooklyn, NY 10314</u> <span style="float:right;"><input type="checkbox"/> N/A</span> *Attach additional sheet <span style="margin-left: 20px;"><b>Borough</b> <u>Brooklyn</u> <b>C.B.</b> <u>13</u> <b>Block #</b> <u>707</u> <b>Lot #</b> <u>14</u></span>		
<b>SELECTION PROCEDURE</b> (*CCPO approval of CRFA required) <input type="checkbox"/> Competitive Sealed Bids <input type="checkbox"/> Competitive Sealed Proposals* ( <input type="checkbox"/> FCRC approved Agency request to deviate from final recommendation of the Selection Committee on __/__/__. ) <input checked="" type="checkbox"/> Different Selection Procedure: * ( <input type="checkbox"/> Sole Source Agreement <input checked="" type="checkbox"/> Other amendment ) > FCRC approved different selection procedure on <u>4/13 /2022</u> . <input type="checkbox"/> Negotiated Concession*		
<b>CONCESSION AGREEMENT TERM</b>  Initial Term: <u>4 years &amp; 157 days from start of this extension beginning on October 1, 2022</u>  Renewal Option(s) Term: <u>N/A</u>  Total Potential Term: <u>20 years</u>  <input type="checkbox"/> * >20 years – FCRC unanimously approved request	<b>ANNUAL REVENUE</b> (Check all that apply) <input type="checkbox"/> Additional sheet ( <input type="checkbox"/> s ) attached <input checked="" type="checkbox"/> The Greater of Annual Minimum Fee(s) <u>For operating years 17-20 of the extended License Agreement, the Licensee shall pay the City a percentage of gross receipts if they exceed \$500,000 in revenue. For the final 157 days of the term the Licensee shall pay the City a percentage of gross receipts if they exceed \$325,000.</u>	
<b>NOTIFICATION REQUIREMENTS</b>		
<b>Subject concession was awarded by CSB or CSP.</b> <span style="float:right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span> If <b>YES</b> , check the applicable box(es) below: <input type="checkbox"/> The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by <u>//</u> which was at least 30 days prior to its issuance.  <input type="checkbox"/> The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.  <input type="checkbox"/> The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by _____, which was at least 40 days prior to issuance of the solicitation.  If <b>NO</b> , check the applicable box below: <input checked="" type="checkbox"/> The Agency certifies that each affected CB/BP received written notice by <u>10/29/2021</u> , which was at least 40 days in advance of the FCRC meeting on <u>12/8 /2021</u> at which the agency sought and received approval to use a different selection procedure.  <input type="checkbox"/> The Agency certifies that each affected CB/BP received written notice on <u>__/__/__</u> , 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 <u>__/__/__</u> .  <input type="checkbox"/> The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on <u>__/__/__</u> .		
<b>Law Department approved concession agreement on</b>		
<b>Award is a major concession.</b> <span style="float:right;"><input type="checkbox"/> YES <input checked="" type="checkbox"/> NO</span>		

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 4/13/2022.

☐ 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 & Recreation ("Parks") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to amend the existing Sole Source License Agreement ("Agreement") with City Ice Sports Inc. for THE OPERATION AND MANAGEMENT OF ABE STARK ICE SKATING RINK.

***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.

Parks negotiated with the concessionaire to complete needed capital improvements to the facility and to provide continuity of service to the public.

Parks negotiated with the concessionaire to invest \$800,000 in capital improvements with work to: install new above-grade glycol header, install new portable ice mat system, rehabilitate chiller, add new controls, purchase R22 reserve supply, purchase rink lighting, repair space heater, rehabilitate AHU 1 and 2, install a new air conditioning (chilled water) heat exchanger, replace the kick plate on the dasher panel, repoint of masonry as needed on exterior of building & replace matting in public bathrooms and in locker rooms where needed. In addition to the capital improvements, for operating years 17-20 the Licensee shall pay the City a percentage of gross receipts if they exceed \$500,000 in revenue. For the final 157 days of its operations, the Licensee shall pay the City a percentage of gross receipts if they exceed \$325,000.

**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:**

Abe Stark Rink is located in Coney Island just off of the boardwalk and has been managed and operated by City Ice Sports since 2006. City Ice Sports has been a successful Parks partner having provided skating and hockey programming for the local community for over 15 years.

Parks is pursuing an amendment to its Agreement with City Ice Sports Inc. to extend the length of the term of the existing concession to March 6, 2027 by adding an additional 4 years & 157 days to the agreement and permitting City Ice Sports Inc. to continue operating while needed capital work is completed. The additional 157 days is to restore time for the forced closure to the public due to 2020 regulations aimed at slowing the spread of COVID-19. The ice rink is in need of significant capital work and keeping City Ice Sports in place would allow for continuity of service to the public and completion of needed capital work. Parks went to the FCRC to pursue an amendment to extend the agreement and Step 1 was unanimously approved at the December 8, 2021 public hearing.

**D. PUBLIC HEARING**

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

## 1. Publication & Distribution of Public Hearing Notice

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

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

**OR**

- ☒ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 3/25/2022, 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 3/25/2021, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 3/25/2022.

- ☒ Brooklyn Courier Life, a NYC local newspaper published in the affected borough(s) on 4/1/2022 and 4/8/2022.  
☒ Brooklyn Daily Eagle, a NYC local newspaper published in the affected borough(s) on 4/1/2022 and 4/8/2022.

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

- ☒ A Public Hearing was conducted on 4/11/2022.

**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.

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. \_\_)

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to amend the existing Concession Agreement (“Agreement”) with City Ice Sports Inc. for the operation and, and management of the Abe Stark Ice Rink in Coney Island, Brooklyn. The sole source agreement will extend the previous term by four (4) years and 157 days, to expire on March 6, 2027.

Compensation to the City under the License Agreement will be as follows: Licensee shall pay to the City license fees for operating years 17-20 a percentage of gross receipts if they exceed \$500,000 in revenue. For the final 157 days (October 1, 2026 – March 6, 2027) of the term the Licensee shall pay the City a percentage of gross receipts if they exceed \$325,000. City Ice Sports Inc has also committed to minimum of \$800,000 in capital investment by October 1, 2022.

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

**April 13, 2022**

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

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

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



SECOND AMENDMENT TO LICENSE AGREEMENT

BETWEEN

**CITY ICE SPORTS, INC.**

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

THE OPERATION AND MANAGEMENT OF ABE STARK ICE SKATING RINK

BROOKLYN, NEW YORK

**B336-A-IS**

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

**SECOND AMENDMENT TO LICENSE AGREEMENT** (“Second Amendment”) made this \_\_\_\_ day of \_\_\_\_\_, 2022, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and City Ice Sports, Inc. (“Licensee”), a corporation organized under the laws of the State of New York, whose address is 89 Lincoln Street, Staten Island, NY, 10314.

**WHEREAS**, the parties to this Second Amendment are parties to that certain License Agreement dated November 25, 2006 (“License Agreement”), as modified by the First Amendment dated September 15, 2011 (“Amendment”); and

**WHEREAS**, Licensee was unable to operate the Licensed Premises from March 16, 2020 to August 19, 2020 (a total of 157 days) due to rules imposed by local and state governments to reduce the spread of COVID-19, and Licensee paid no License Fees to the City for this period;

**WHEREAS**, the parties desire to allow Licensee to operate the Licensed Premises for an additional 157 days to recover the time it lost due to closures beyond its control;

**WHEREAS**, the Department of City Planning (“DCP”), partnered with the Economic Development Corporation (“EDC”), the Department of Housing Preservation and Development (“HPD”), and Parks in 2009 to develop a comprehensive rezoning plan to establish a framework for the revitalization of the Coney Island amusement area and the surrounding blocks, calling for the demolition and reconstruction of the Licensed Premises;

**WHEREAS**, the completion date of the rezoning action is uncertain, and the parties wish to provide for continued service at Abe Stark Rink while the rezoning action is pending;

**WHEREAS**, the parties further desire to extend the term of the License to March 6, 2027 to allow for a continuity of service at the Licensed Premises for as long as possible in light of the plans for the site.

**WHEREAS**, the parties desire to amend the terms of the License Agreement subject to and in accordance with the terms of this Second Amendment.

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

**1.1** Unless otherwise noted in this Second Amendment, all capitalized terms in this Second Amendment shall have the meaning ascribed to them in the License Agreement.

**1.2** Section 3.1 of the License Agreement is hereby amended by deleting Section 3.1 in its entirety and inserting the following new Section 3.1:

This License shall become effective upon Licensee receiving notice from Parks and shall be for the term beginning October 1, 2006 ("Commencement Date") and ending March 6, 2027 ("Expiration Date"). The period between the Commencement Date and the Expiration Date shall be the License Term (the "Term"). The Term includes 157 days of operation restored to the Licensee as they were unable to operate due to regulations aimed at preventing the spread of COVID-19 from March 16, 2020 to August 19, 2020. During the Term, the Licensee shall operate the Licensed Premises as an ice skating rink during the months of October through April ("Operating Season" or "Ice Skating Season").

**1.3** The table of License Fees set forth in Section 4.1(a) of the License Agreement is hereby amended by deleting that table in its entirety and replacing it with the following table:

<b>Operating Year(s)</b>	<b>Minimum Annual Fee</b>	<b>Vs. Percentage of Gross Receipts</b>
1-9	\$175,000.00	25% of Admission Fees 25% of Ice Skate Rental Fees 20% of Ice Rental Fees 2% of Net Vending Sales 10% of Net Ice Skate Instruction Fees 25% of All Other Revenue
10-13 (Options Years 1-4)	\$183,750.00	Same As Above

14-16 (Option Years 5-7)	\$192,937.50	Same As Above
17-20	Percentage of Gross Receipts, if applicable.	If Licensee's Gross Receipts in any Operating Year exceed \$500,000, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$500,000: 25% of Admission Fees 25% of Ice Skate Rental Fees 15% of Ice Rental Fees 2% of Net Vending Sales 10% of Net Ice Skate Instruction Fees 30% of All Other Revenue
10/1/26 to 3/6/27, time restored to Licensee	Percentage of Gross Receipts, if applicable	If Licensee's Gross Receipts during this period exceed \$325,000.00, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$325,000.00: 25% of Admission Fees 25% of Ice Skate Rental Fees 15% of Ice Rental Fees 2% of Net Vending Sales 10% of Net Ice Skate Instruction Fees 30% of All Other Revenue

**1.4** The first two sentences of Section 4.2 of the License Agreement are hereby amended by deleting them in their entirety and replacing them with the following two sentences:

Licensee's payments to Parks hereunder shall be paid in equal installments on or before the first (1<sup>st</sup>) days of February, March, and April of Operating Year 1 through 16. For Operating Years 17 through 20 and during the time restored to Licensee from October 1, 2026 to March 6, 2027, any required payments due to Parks shall be paid within 30 days of the end of the Operating Season. See Exhibit A-2 for Fee Payment Schedule.

**1.5** Section 11.1 of the License Agreement is hereby amended by deleting Section 11.1(a) in its entirety and inserting the following new Section 11.1(a):

Licensee shall complete certain Capital Improvements, as defined in Article 2.1(k), at the Licensed Premises in accordance with the Schedule of Capital Improvements annexed hereto as Exhibit D, Exhibit D-1, and Exhibit D-2. Such Capital Improvements listed in Exhibit D shall be completed by June 15, 2007, and shall include but not be limited to and cost at least as much as the items listed in Exhibit D. Such Capital Improvements listed in Exhibit D-1 shall be completed by August 31, 2011, and shall include but not be limited to and cost at least as much as the items listed in Exhibit D-1. Such Capital Improvements listed in Exhibit D-2 shall be completed by October 1, 2022, and shall include but not be limited to and cost at least as much as the items listed in Exhibit D-2. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements provided, however, Licensee first obtains the express written permission of the Commissioner. All Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Section 11, shall become the property of Parks upon installation, at Parks' option. To ensure faithful completion of the Capital Improvements described herein, Licensee shall post a construction security bond to Parks, in an amount and form acceptable to Parks, before any Capital work as described in this Section 11 is commenced. In the event Licensee performs all Capital Improvements for less than the amount listed on Exhibit D herein, any excess monies shall be remitted to the City as additional license fees within thirty (30) days following the Expiration Date. The City acknowledges and agrees that (x) Licensee has completed or caused to be completed all of the Capital Improvements set forth on Exhibit D and Exhibit D-1 and that all such Capital Improvements are Finally Complete and (y) Licensee has satisfied all financial obligations in connection with such Capital Improvements listed in Exhibit D and Exhibit D-1.

**1.6** The exhibits to the License Agreement are hereby amended by removing Exhibit A-1 and adding as Exhibit A-2 Amendment Fee Payment Schedule. All references to “Exhibit A” or “Exhibit A-1” in the License Agreement are replaced with “Exhibit A-2.”

**1.7** The exhibits to the License Agreement are hereby amended by adding Exhibit D-2 to the License Agreement.

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

CITY OF NEW YORK  
PARKS & RECREATION

CITY ICE SPORTS, INC.

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

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

Name: Alex Han

Name: Dennis Quirk

Title: Chief of Concessions

Title: \_\_\_\_\_

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

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

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK )

On this \_\_ day of \_\_\_\_\_, 2022 before me personally came Alex Han to me known, and known to be the Chief of Concessions of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK )

On this \_\_ day of \_\_\_\_\_, 2022 before me personally came Dennis Quirk to me known, and known to be the \_\_\_\_\_ of City Ice Sports, Inc., and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

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Notary Public

**EXHIBIT A-2**  
**Amended Fee Schedule**

**Operating Years 1-9: October 1, 2006 to April 30, 2015**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
February 1	\$58,335.00	VS. 25% of Admission Fees
		25% of Ice Skate Rental Fees
March 1	\$58,335.00	20% of Ice Rental Fees
		2% of Net Vending Sales
April 1	\$58,330.00	10% of Net Ice Skate Instruction Fees
		25% of All Other Revenue
<b>Total:</b>	<b>\$175,000.00</b>	

**Operating Years 10-13: October 1, 2016 to April 30, 2020**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
February 1	\$61,250.00	VS. 25% of Admission Fees
		25% of Ice Skate Rental Fees
March 1	\$61,250.00	20% of Ice Rental Fees
		2% of Net Vending Sales
April 1	\$61,250.00	10% of Net Ice Skate Instruction Fees
		25% of All Other Revenue
<b>Total:</b>	<b>\$183,750.00</b>	

**Operating Years 14-16: October 1, 2020 to April 30, 2022**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
February 1	\$64,312.50	VS. 25% of Admission Fees
		25% of Ice Skate Rental Fees
March 1	\$64,312.50	20% of Ice Rental Fees
		2% of Net Vending Sales
April 1	\$64,312.50	10% of Net Ice Skate Instruction Fees
		25% of All Other Revenue
<b>Total:</b>	<b>\$192,937.50</b>	



**Operating Years 17-20: October 1, 2022 to April 30, 2026**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
Any applicable payment is due to Parks within 30 days of the end of the Operating Season.	Percentage of Gross Receipts, if applicable.	If Licensee's Gross Receipts in any Operating Year exceed \$500,000, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$500,000:
		25% of Admission Fees
		25% of Ice Skate Rental Fees
		15% of Ice Rental Fees
		2% of Net Vending Sales
		10% of Net Ice Skate Instruction Fees
		30% of All Other Revenue

**Restored Time: October 1, 2026-March 6, 2027**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
Any applicable payment is due to Parks within 30 days of the end of the Operating Season.	Percentage of Gross Receipts, if applicable.	If Licensee's Gross Receipts during this period exceed \$325,000.00, it shall pay to Parks the following percentages of the Gross Receipts in excess of \$325,000.00:
		25% of Admission Fees
		25% of Ice Skate Rental Fees
		15% of Ice Rental Fees
		2% of Net Vending Sales
		10% of Net Ice Skate Instruction Fees
		30% of All Other Revenue

## **EXHIBIT D-2**

### **Schedule of Capital Improvements Added by the 2022 Amendment to License Agreement**

**The following Capital Improvements shall be completed by October 1, 2022.**

**Total Minimum Capital Improvement Investment: \$800,000.**

1. Install new above grade Glycol header
2. Purchase and install new portable Ice Matt System
3. Chiller rehab
4. New controls (small BMS)
5. Purchase R22 reserve supply
6. Rink Lighting
7. Space heater repair/replacement
8. AHU 1 and 2 rehab
9. New air conditioning (chilled water) heat exchanger
10. Replace the kick plate on the dasher panel
11. Repoint the masonry as needed on exterior of building
12. Replace all matting in public bathrooms and in locker rooms where needed
13. Miscellaneous equipment and repairs as needed