

Request For Proposals

Recreational Programming Operator The Samuel J. and Ethel LeFrak Center



Issue Date: November 18, 2024

Estimated Contract Start Date: May 2025

PART I – INTRODUCTION

About Prospect Park Alliance and The Samuel J. and Ethel LeFrak Center

Designed by Frederick Law Olmsted and Calvert Vaux in 1866, Prospect Park is a 585-acre urban oasis located in the heart of Brooklyn. It is Brooklyn’s largest open green space, contains its only forest and features a 60-acre lake. With over ten million visits annually, the park welcomes a diverse range of visitors from its many surrounding neighborhoods and beyond.

Since its founding in 1987, the Prospect Park Alliance (“PPA”) has played a leading role in sustaining, restoring, and advancing Prospect Park, Brooklyn’s Backyard. In partnership with the City of New York (“City”), PPA provides critical staff and resources that keep Prospect Park green and vibrant. PPA cares for the 350 acres of natural areas, restores buildings and landscapes, operates key visitor facilities, and provides the community with free or low-cost volunteer, educational, and recreational programs.

Opened in 2013, the Samuel J. and Ethel LeFrak Center (“LeFrak Center”) is a LEED-certified 25,000 square foot facility located in the busy and vibrant southeast corner of the Park. Since opening, the LeFrak Center has remained one of the park’s most popular attractions. The LeFrak Center offers two open-air ice skating rinks, one covered and the other uncovered. In the warmer months, the covered rink converts to roller skating and the uncovered rink converts to a free water playground (“splash pad”). Today, the site also offers bike and boat rentals, a cafe, and multi-purpose rooms that can be used for private events. In addition, the landscapes surrounding the facility as well as the building’s unique green roof remain a stand-out asset.

Notably, the release of this RFP is the beginning of a new phase where PPA will take on some of the responsibilities that are currently the responsibility of the third-party operator. With dedicated staff onsite, PPA will closely oversee the performance and operations of two sub-licensees – a recreational programming operator (“Operator”) and a food and beverage operator (“F&B Operator”). Parks will continue to provide stationary engineering services in support of the refrigeration of the two ice rink slabs.

With an expected start date in May 2025, the newly contracted Operator will be responsible for ice- and roller-skating operations, adult and youth programming, lessons, leagues, as well as rink maintenance (note that refrigeration of the slabs, but not the making or maintenance of ice, is provided by Parks), and maintenance of other rink- and skating-related equipment. They will operate directly or sub-license bike and boat rentals. PPA is also open to considering proposals that include other programmatic uses outside of the ice skating season that will benefit the public and fit the needs of the site, while maintaining roller skating as a key programmatic element, with Parks approval. The Operator will be responsible for customer interactions including ticketing, equipment rentals, promotion, group sales. The Operator will also manage rink and party room rentals and may propose other events to PPA and Parks.

As noted above, PPA also will contract with an F&B Operator. PPA is issuing a separate RFP for that operation, but operators can choose to propose on both RFPs or just on one of them.

Proposers should be aware that the LeFrak Center is operated by PPA under a concession license agreement (“Concession Agreement”) with the New York City Department of Parks and Recreation (“Parks”). In accordance with the Concession Agreement, the proposer selected by PPA will operate pursuant to a sublicense with PPA (“Sublicense Agreement”). A copy of the Concession Agreement is attached as Exhibit G. The sublicense agreement will be subject to and subordinate in all respects to the Concession Agreement, which is incorporated herein, and any subsequent amendments. In the event of a conflict between the terms of the sublicense agreement and the Concession Agreement, the Concession Agreement will control.

PART II – SCOPE OF SERVICES

This section outlines the roles and responsibilities for the Operator at the LeFrak Center.

Programming

The Operator will manage and execute programming during Ice Skating Season (typically November through March) and Roller Rink/Splash Pad Season (typically Memorial Day through Labor Day), exact dates to be determined by PPA and Parks, including:

- Public skating and group sales
- Skate school and lessons, curling, ice and roller hockey team play
- Rink rentals (e.g. team practices, parties, figure skating, etc.)
- Bike rentals, boat rentals, and other non-skate programming subject to Parks prior written approval (PPA is open to proposals that include alternative non-skate Parks appropriate programming in the non-ice season (e.g. health and wellness classes, pickleball, other offerings subject to approval by PPA and Parks)
- Other Parks appropriate special programs and events (subject to approval by PPA and Parks)

Staffing

The Operator will provide staff who will perform customer service duties including

- Selling and scanning tickets, equipment rental sales/distribution, general assistance to members of the public
- Enforcing skating rules and keeping skaters safe, facilitating entry/exit from the rink, assisting inexperienced skaters, skating alongside the public for the duration of a shift, and closing the rink at the end of a session or start of a break. No fewer than three skate guards should be on site at all times.
- Providing basic first aid to the public and relevant training for other employees
- Coordinating and staffing events, skate school, and other programming as required
- Coordinating and staffing bike rentals, boat rentals, pro shop, as required
- Performing rink maintenance
- Overseeing seasonal transitions as needed

The Operator will also hire such professional staff as necessary to fulfill the requirements of this contract, including appropriate accounting, human resources, compliance, information technology, procurement, marketing, programming and other roles as necessary for successful implementation.

The Operator will designate an overall point of contact and on-site leader for the team. Each shift will have an on-site manager providing a point of contact for management issues. This individual will be

cognizant of all aspects of the operation, coordinate with partners from PPA and Parks, and will direct and supervise all on-site employees and contractors of the Operator.

Ticket Sales, Marketing, and Promotion

The Operator will implement online and in person ticket sales, point of sale management, and promotional campaigns in collaboration with PPA. PPA will provide baseline marketing support including maintaining a dedicated presence on its website and social media channels for activities at the LeFrak Center and expects that promotion beyond that will be undertaken in a deeply collaborative way.

Special Events & Rentals

Subject to prior written approval from PPA and Parks, the Operator may conduct special events or programs (e.g., either arranged by Operator or by reservation of the rink(s) or other areas by a third party). In no event shall the rink(s) be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by PPA and Parks and such a closure has been announced to the public at least two weeks in advance. All revenue generated through such special events must be reported to PPA and Parks as Gross Receipts. The Operator commits to ensuring that rental fees are reasonable and community-focused.

PPA, Operator, and F&B Operator will each contribute to a shared calendar noting rentals or other private events, public events, meetings, and other spaces uses. In general, the Operator will be expected to remain in good standing with and coordinate with the F&B Operator as the exclusive food and beverage partner for the facility.

Parks, acting on behalf of the City, and PPA, each reserve the right to host up to three events, annually, at the LeFrak Center, including benefits and other non-profit or public events. PPA and Parks will use their best efforts not to interfere with the Operator's rights, powers and privileges necessary for the proper conduct and operation and to schedule such functions no less than thirty days prior to the function. During any such function, Operator shall be obligated to operate without cost to PPA or Parks, including but not limited to providing skates, skating guards and other personnel.

PPA will provide security of the site outside hours of operation but the Operator will provide additional security for events as needed based on attendance estimates. Note that all outdoor amplified sound must end no later than 10:00pm.

Customer Service

PPA expects the Operator to maintain a high-quality amenity for the public with exceptional customer service. The Operator will prioritize creating a welcoming atmosphere onsite and handle customer complaints promptly and thoroughly. The Operator will have a staff person who will be responsible for responding to customer feedback. The Operator will establish a customer service training program specific to the LeFrak Center; all personnel will be encouraged to have positive, friendly, and helpful interactions with the public. The Operator will also establish methods and modes to receive feedback and evaluation from customers and will take appropriate actions to improve operations based on that information.

In addition, the Operator will recognize the role that the Center plays within the park and will be conscious about maintaining positive relationships with local community clients (individuals and

Community Based Organizations). The Operator must respect all rules of a public park. This includes ensuring deliveries are supervised and there is minimal disruption to park users to maintain operational excellence for the facility.

Rink Maintenance

The Operator will develop and manage a rink maintenance plan to maintain the rink surfaces, dasher boards, and other equipment at the highest industry standards during the season. The Operator will be responsible for training employees on the use of the ice resurfacing machines as well as regular and routine maintenance tasks for the machines. The Operator will recruit, hire, train, and manage the rink maintenance staff, who will perform work such as building and resurfacing the ice, monitoring conditions, adjusting rink maintenance procedures as needed, and working closely with PPA and Parks to ensure all elements are operated and maintained properly.

Seasonal Transitions

The Operator will be responsible for the annual installation, removal, and storage of all seasonal equipment, which may include, but is not limited to, dasher boards, ancillary equipment to make and maintain ice, lighting, rubber flooring, and other equipment. At the end of each ice skating Season, the Operator will be responsible for melting the ice and performing necessary repairs for the operation of the rink and splash pad. The Operator will recruit, hire, train, and manage staff or contractors to perform this work.

Skate Rental & Sharpening Station

The Operator must operate a skate rental service during ice and roller seasons and may operate a sharpening service during the ice season. All equipment to be rented at the skate rental and sharpening station and the proposed prices of those items are subject to PPA and Parks' prior, written approval.

The Operator will be required to provide adaptive ADA ice sleds at no additional cost to customers who may request them. The Operator will be required to have a minimum of one (1) adult and one (1) child adaptive ADA ice sleds available. PPA will look favorably on proposals that include other adaptive equipment or programming.

Bike Rentals

The Operator is encouraged to offer (or subcontract) bike rentals from the spring through the fall. Proposals should include a detailed plan for bike rentals including but not limited to hours, prices, staffing plans, route signage, safety and security plans, and maintenance plans. PPA will view favorably proposals that include a variety of bicycle models for rent (such as 21-Speed, road, tandem, cruisers, etc.) and cater to all age groups and levels of sportsmanship. Proposals should include plans that offer cycling opportunities for persons with disabilities, including handcycles and tandem bicycles for the visually impaired.

The exact size, specific location, and design of the operations are subject to PPA and Parks' prior written approval. The Operator will be required, at its sole cost and expense, to provide and maintain bikes and related equipment, secure storage for bikes and equipment, and have sufficient personnel to support a fully functional bike rental service. The Operator will be required to provide bike helmets to all riders free of charge.

Boat Rentals

The Operator must offer (or subcontract) boat rentals from the boat dock from the spring through the fall. Proposals should include a detailed plan for boat rentals including but not limited to hours, prices, staffing plans, safety and security plans, and maintenance plans.

The exact size, specific location, and design of the operations are subject to PPA and Parks' prior written approval. The Operator will be required, at its sole cost and expense, to provide and maintain boats and related equipment, secure storage for boats and equipment, and have sufficient personnel to support a fully functional boat rental service. The Operator will be required to provide life vests and all other safety equipment to customers free of charge.

Pro Shop

Proposers may include the sale of merchandise, supplies, and equipment from a pro shop (or sub licensing the sale), the size and location of which are subject to PPA and Parks' prior written approval. All merchandise to be sold at the pro shop and the proposed prices of those items are subject to PPA and Parks' prior written approval.

Sublicensing Option

PPA will entertain proposals that include the sublicensing of pro shop operations, bike rentals, boat rentals, and other non-skate programming. Any sublicense agreements are subject to PPA and Parks' prior written approval. Proposers seeking to sublicense operations will be required to report total Gross Receipts generated. All sublicensees will be subject to the same internal control requirements as the Operator. In the event the proposer's fee offer is made in the form of a guaranteed minimum payment vs. a percentage of gross revenue, total Gross Receipts from sublicensed operations must be included in the gross revenue upon which payment to PPA is based, unless otherwise approved by PPA and Parks.

Administration and Deliverables

Formal written deliverables will be required under the Sublicense Agreement. Deliverables are anticipated to include the following, with additional reports or information to be added based on substantive management needs that may be identified.

Upon award of the contract, within 30 days, the Operator will provide a detailed written plan for the transition that will include a staffing plan and timeline for recruitment, training, and onboarding; and confirmed plans for programming, pricing, promotion, and programming timeline.

PPA will work with the Operator to develop format and content for monthly reports that will be required during the course of the term and these are anticipated to include the following:

- Monthly financial report showing an itemized breakdown of revenue in a format approved by PPA and Parks
- Annual profit & loss account for the past year's operation within 60 days of the end of each year
- Operations report, including programming overview, staffing report, notice of any challenges
- Incident reports, to include a summary of all reported accidents from the month.
- Other reports to include attendance/utilization report, lists of ticket buyers, renters, and class registrants with demographic and contact information.

Key Contractual Requirements

Term

Proposals must be for a five (5) year term, which will begin in May 2025 and extend through July 17, 2030. This concession will be operated pursuant to a Sublicense Agreement issued by PPA; no leasehold or other proprietary right is offered. The sublicense terminates if the Concession agreement terminates and is otherwise terminable at will. Parks and PPA shall replace any manager, officer, employee, subcontractor or sublicensee whenever reasonably requested by the NYC Parks Commissioner ("Commissioner").

Approvals

Parks and PPA must approve pricing, hours of operation, events, closures, any and all signage, changes to the facility space, the location of equipment and other items in public areas within the site and marketing and sponsorship agreements.

The Operator will be prohibited from displaying, placing, or permitting the display or placement of advertisements in or on the Premises without the prior written approval of Parks. The display or placement of tobacco or non-tobacco smoking products, electronic cigarette or alcoholic beverage advertisement shall be prohibited, as defined in Section 17-502 of the Administrative Code of the City of New York. The advertising of product brands is prohibited without Parks' prior written approval.

Space

The Operator will have the right to use the spaces agreed upon during the negotiation (see map in EXHIBIT B). Any other storage space will be off-site at the Operator's cost.

Security Deposit

The Operator will be required to submit a non-interest bearing security deposit of 25% of the highest year's guaranteed minimum sublicense fee, which will be required for the duration of the term of the license.

Insurance

The Operator will be required to carry Commercial General Liability insurance in at least Three Million Dollars (\$3,000,000) per occurrence, Five Million Dollars (\$5,000,000) aggregate, and statutory limits of Worker's Compensation, Employer's Liability and Disability Benefits Insurance. The Commercial General Liability insurance will be required to name the City of New York, including its officials and employees], as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form GC 20 26, and the City's limits will be no lower than the Operator's.

If vehicles are to be used in connection with the operation, the Operator shall carry Commercial Automobile Liability insurance in the amount of \$1,000,000 for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles.

In the event the Operator shall serve alcohol, the Operator shall carry or cause to be carried Liquor Law Liability Insurance in an amount not less than two (2) Million Dollars (\$) per occurrence and name the City and PPA as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

In the event the Operator shall permit sublicensees or others to serve alcohol, the Operator shall carry or cause each such person to carry liquor law liability insurance in an amount not less than two (2) million Dollars per occurrence and name the City and PPA as additional insured. Such insurance shall be effective prior to the commencement of any service of alcohol and continue throughout such operations.

Proposers are on notice that the City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed concession warrants it.

Indemnity

To the fullest extent permitted by law, the Operator shall indemnify, defend and hold PPA, the City and their 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, reasonable attorneys' fees and disbursements) arising out of or related to any of the operations under the Sublicense Agreement (regardless of whether or not operator itself has been negligent) and/or Operator's failure to comply with the law or any of the requirements of the sublicense. Insofar as the facts or law relating to any of the foregoing would preclude PPA and the City or their officials and employees from being completely indemnified by Operator, PPA the City and their officials and employees shall be partially indemnified by Operator to the fullest extent permitted by law. Operator's obligation to defend, indemnify and hold PPA the City and their officers and employees harmless shall not be (i) limited in any way by Operator's obligations to obtain and maintain insurance under the Sublicense Agreement, nor (ii) adversely affected by any failure on the part of PPA and the City or their officers and employees to avail themselves of the benefits of such insurance.

Inspections & Liquidated Damages

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

Taxes

The Operator will be required to pay all taxes applicable to the operation of the concession, including commercial rent tax (if applicable). Gross receipts shall exclude the amount of any Federal, State, or City sale taxes which are paid by the Operator as against its sales.

Prohibitions

Smoking of any tobacco or non-tobacco smoking products and the use of electronic cigarettes are strictly prohibited at the Premises except in parking lots or on sidewalks along the park perimeter. The Operator shall adhere to and enforce this policy.

The sale of beverages in glass bottles is prohibited. All beverages must be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers is prohibited in the operation of the concession.

No Exclusive Vending Rights

Proposers should note that the Sublicense Agreement will not grant the Operator exclusive rights to sell in the park in which the Premises are located. Moreover, PPA or Parks may grant other licenses to concessionaires to sell the same or similar items authorized under the Operator's Sublicense Agreement within the same park in which the concession is located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with the successful concessionaire or operate near the Premises.

Earned Sick Time Act

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. Operator(s) of the City of New York [or of other governmental entities] may be required to provide sick time pursuant to the PSLL. Exhibit H the Paid Sick Leave Law Rider, will be included in any Sublicense Agreement awarded from this RFP and will incorporate the PSLL as a material term of such agreement.

Internal Controls

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

PART III – PROPOSAL CONTENT GUIDELINES

Each proposal is expected to include the following:

Planned Operations

Proposers should submit a detailed operational plan, including but not limited to programming overview, hours of operation, services to be provided, merchandise to be sold, a detailed list of all proposed prices and rates, internal controls, maintenance plans, safety plans.

PPA encourages proposers to incorporate a programming component into their proposals, (e.g., youth outreach programs, skate school, hockey program, discounted/free services, special programs or accommodations for senior citizens and persons with disabilities, scholarships for youth in need, and other means of community engagement).

Staffing Plan

Proposers should submit an organization chart with an estimated number of full-time and seasonal employees and the positions and working hours of these employees.

Seasonal Rink Prices

Current prices are attached in Exhibit E. Modest increases will be considered, subject to approval by both PPA and Parks.

Hours of Operation

Starting operating hours are attached in Exhibit F. The Operator may only operate when the park is open. All hours of operation are subject to PPA and Parks' prior written approval.

Customer Experience

Proposers should explain the mechanisms they would use to measure customer satisfaction with the services offered. Such mechanisms might include customer evaluations or survey forms. Further, PPA would like proposers to explain how they would improve the quality of services offered if the above mechanisms indicate a need to do so. PPA will view favorably proposals that demonstrate an awareness of the role of the LeFrak Center as an integral part of the surrounding community.

Income and Expense Projections

Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all the assumptions used in its formulation.

Marketing and Communications

Proposers should include a detailed marketing and communications plan.

Improvements/Upgrades

Proposers should submit a list of any proposed improvements/upgrades to the facility they may want to make.

Sustainability Practices

As a protector of green spaces, PPA is deeply committed to respecting the environment. Therefore, all proposed operational plans should include a detailed description of environmentally friendly practices planned.

Operating Experience

Proposers should submit a resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with City agencies, and/or access to individuals and/or firms with such expertise. the names and addresses of all corporate officers of the entity submitting the proposal. If any principal owner and/or officer of the submitting entity is currently or has been a principal officer of another entity or entities within the last five (5) years, that entity or entities (including applicable tax identification numbers) should be identified as well.

References

Proposers should attach a list of at least three (3) recent relevant references, with whom the proposer has previously worked and/or who can describe such matters as the proposer's financial and operational capability. One of the three references should be from a financial institution that has extended credit to the proposer. Include the name of the reference entity, a description of the nature of the listed reference's experience with the proposer and the name, title, address, and telephone number of a

contact person at the reference entity.

Safety

Since safety is of the utmost concern, proposers with prior experience in operating this type of facility or similar facilities should submit their personal and/or company safety record. Each proposal should include a detailed outline of rink maintenance schedules and safety precautions required for the operation of skating rinks as well as any applicable staff qualifications and certifications.

Fee Offer

The fee offer should state the highest sum each proposer is prepared to pay as a license fee, expressed as guaranteed annual minimum fee versus a percentage of Gross Receipts, whichever is greater. PPA urges that there be an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum fee over the license term. Proposers should fill out the chart below and include it in their proposal.

	Year 1	Year 2	Year 3	Year 4	Year 5
% of Gross Receipts					
Minimum Fee					

Financial Capability

Proposers should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and/or personal).

Proposers should identify the intended source of all funds proposed to be invested at the site.

PART IV – PROPOSAL SUBMISSION INSTRUCTIONS

All proposals must be received by January 17, 2025.

The Proposer's name and contact information should be on the cover page of the proposal.

Proposers should send electronic proposals to ekrell@prospectpark.org.

If unable to submit an electronic proposal Proposers may submit an original hard copy proposal to PPA at the following address: Emily Krell, Prospect Park Alliance, 95 Prospect Park West, Brooklyn, NY 11215

You must notify PPA if you cannot submit a proposal electronically and will be submitting it in person, by mail, courier service, etc. If submitting a hard copy proposal, the following procedures would apply: The proposal should be typed on both sides of 8 ½" X 11" paper. Pages should be paginated. The City of New York requests that all proposals be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency.

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to PPAs' prior written approval. Oversized drawings may be submitted, but must be accompanied by 8 ½" x 11" sectionals or reductions to 8 ½" x 11". Proposer's Name and Address should be printed on the outside of the envelope.

PART V – EVALUATION AND SELECTION PROCEDURES

Proposals will be evaluated by a selection committee composed of a minimum of three (3) PPA employees based on the criteria listed below. The operation will be awarded to the proposer whose submission the selection committee judges best overall based on these criteria.

PROPOSAL EVALUATION CRITERIA

In evaluating proposals, the Selection Committee will use the following criteria:

Planned operations (30%)
Operating experience (30%)
Fee offer (30%)
Financial capability (10%)

EVALUATION PROCEDURES

PPA will only consider proposals that meet satisfactory levels of the above criteria. PPA is not required to accept the proposal that includes the highest fee offer. PPA's acceptance of a proposal does not imply that every element of that proposal has been accepted

PPA cannot consider any proposal that does not comply with the "Submission Requirements" section of this RFP. Proposals that do not meet these requirements will not be evaluated. When feasible, employees of PPA will visit facilities operated by proposers.

OTHER GENERAL RFP REQUIREMENTS AND CONDITIONS

PPA reserves the right to postpone or cancel this RFP at any time or reject all proposals, if in its judgment it deems it to be in the best interest of PPA to do so.

Proposers are advised that PPA has the option of selecting the proposer without conducting discussions or negotiations. Therefore, proposers should submit their best proposals initially, since discussions or negotiations may not take place.

Proposers are also advised that the award of this concession is subject to applicable provisions of federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity.

Proposers have the right to appeal a determination of non-responsiveness and/or non-responsibility and have the right to protest a solicitation and award as specified in Chapter 1 of Title 12 of the Rules of the City of New York.

All RFP submission materials become the property of PPA. PPA shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therein.

Proposers should be aware that this concession will be developed and operated pursuant to a Sublicense Agreement issued by PPA. Notwithstanding any language contained herein, the Sublicense Agreement will be terminable at will by PPA or Parks. In the event this agreement is terminated, PPA will not reimburse the Operator's unamortized capital improvement costs.

A proposer may submit a modified proposal to replace all or any portion of a proposal submitted up until the proposal submission deadline. PPA will only consider the latest version of the proposal. Late proposals and late modifications will not be considered for evaluation, except as provided for in Section 1-13(j)(2)(i) of the City of New York's Concession Rules. Proposers may withdraw their proposals from consideration at any time before the proposal submission deadline by submitting written notice to PPA. A proposer may not withdraw its proposal before the expiration of forty-five (45) calendar days after the date of the opening of proposals; thereafter a proposer may only withdraw its proposal by submitting written notice to PPA in advance of an actual grant of a concession.

Technical addenda issued by PPA will be the only authorized method for communicating clarifying information to all potential proposers. Proposers should contact PPA before submitting a proposal to verify that they have received any addenda issued. Proposers shall acknowledge the receipt of any addenda in their proposal submissions.

RFP TIMETABLE

Release Date: November 18, 2024

Remote Proposer Meeting: December 9, 2024 at 11AM (EST)

Google Meet Link: <https://meet.google.com/zeb-qioa-xxz>

Or dial: (US) +1 732-798-5655 PIN: 315 324 600#

More phone numbers: <https://tel.meet/zeb-qioa-xxz?pin=2629455322277>

Proposals Due: January 17, 2025 by 3PM (EST)

Proposer Interviews (if any): Week of February 3, 2025

If you are considering responding to this RFP, please make every effort to attend the Proposer Meeting. Email Emily Krell (ekrell@prospectpark.org) to confirm your attendance. Subject to availability and by appointment only, we may set up a meeting/tour at the LeFrak Center.

The Selection Committee may decide to meet with certain proposers during the week of February 3, 2025. It is recommended that proposers keep the week of February 3, available to meet with the Committee. If there are circumstances beyond a proposer's or PPA's control and the meeting cannot take place on the week of February 3, PPA will schedule a meeting between the proposer and the selection committee on an alternate date.

EXHIBITS

Exhibit A – Site Maps

Exhibit B – Proposer Checklist

Exhibit C – List of Operator Responsibilities

Exhibit D – Site Financials (Recent gross receipts)

Exhibit E – Current Pricing

Exhibit F – Current Hours of Operation

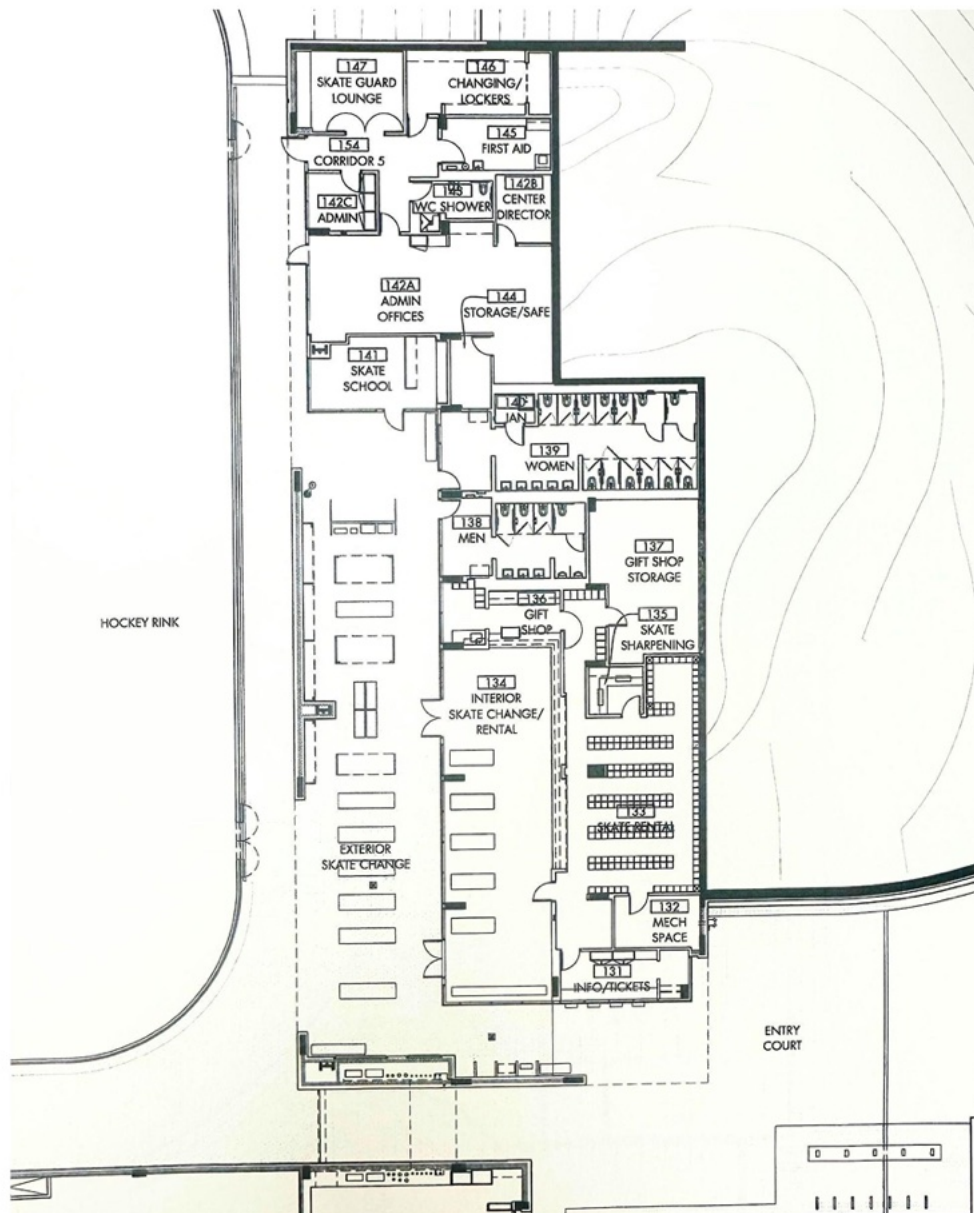
Exhibit G – License Agreement

Exhibit H – Paid Sick Leave Law

Exhibit A – Site Maps

Indoor spaces at the LeFrak Center will be shared between the Recreational Programming Operator, the Food & Beverage Operator, Prospect Park Alliance, and NYC Parks. This image is preliminary and negotiation of actual space use will happen at the contract stage. The RPO will likely have use of the majority of Building A plus some storage space in Building B. F&B Operator will have use of the kitchen and adjacent storage / office space in Building B. Prospect Park Alliance will use several rooms in Building B and have access to all spaces in the Center as needed. Parks will have exclusive use/access to Building mechanicals and access to all other spaces as needed.

Building A:



Building B:

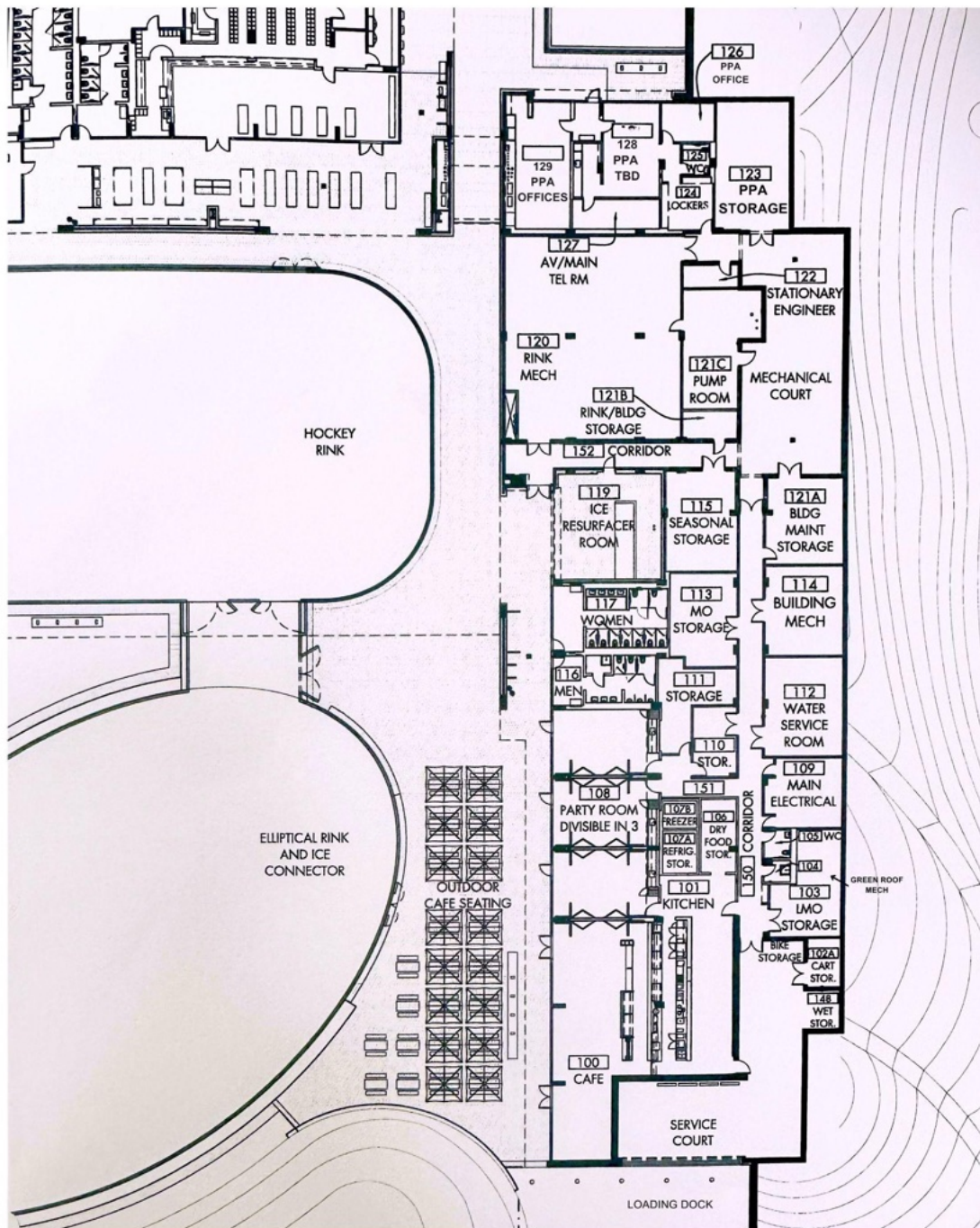


Exhibit B – Proposer Checklist

Planned Operations

- Detailed operational plan
- Programming overview
- Hours of operation
- Services to be provided
- Merchandise to be sold
- Detailed list of all proposed prices and rates

Staffing Plan

- Organization chart
- Estimated number of full-time and seasonal employees
- Positions and working hours of employees

Customer Experience

- Mechanisms to measure customer satisfaction
- Plan for improving services based on customer feedback

Income and Expense Projections

- Detailed financial projections covering the 5-year term showing assumptions about income sources and expense items
- Explanations for all assumptions used

Marketing and Communications

- Detailed marketing and communications plan

Improvements/Upgrades

- List of any proposed improvements/upgrades to the facility

Sustainability Practices

- Detailed description of environmentally friendly practices

Operating Experience

- Resume or detailed description of professional qualifications
- Names and addresses of all corporate officers
- Identification of any other entities associated with principal owners/officers in the past five years

References

- List of at least three recent relevant references

- One reference from a financial institution
- Description of the nature of the references' experience with the proposer
- Contact information for reference entities

Safety

- Personal and/or company safety record
- Detailed outline of rink maintenance schedules and safety precautions
- Applicable staff qualifications and certifications

Fee Offer

Fill in this chart showing highest sum prepared to pay as a license fee (guaranteed annual minimum fee vs. percentage of Gross Receipts, whichever is greater) and escalation of at least 5% per year in the guaranteed minimum fee over the license term.

	Year 1	Year 2	Year 3	Year 4	Year 5
% of Gross Receipts					
Minimum Fee					

Financial Capability

- Supporting documentation of financial worth (Certified Financial Statements, Balance Sheets, Income Statements, tax returns from the past three years)

Proposal Submission Instructions

- Proposer's name and contact information on the cover page
- Submission by the deadline (January 17, 2025)

Ensure that all the above elements are included and thoroughly detailed in your proposal to meet the requirements set forth by the Prospect Park Alliance for the LeFrak Center Recreational Programming Operator RFP.

Exhibit C – Responsibilities

The release of this RFP is the beginning of a new phase where PPA will become the primary caretaker of the LeFrak Center, taking on building operations including security, maintenance, and repairs, a key shift from the current division of responsibilities.

This list reflects the division of responsibilities following this RFP, with PPA taking on many responsibilities currently held by the Operator.

Recreational Programming Operator responsibilities to include:

- Development of a comprehensive programming strategy including, but not limited to, public ice and roller skating; skate school; leagues; holiday and school break programs, other activities/programs
- Planning and execution of rink operations and the staffing thereof including, but not limited to, ice-making and maintenance (other than the refrigeration of the slab); dasher board installation, removal and storage; hockey line striping and other surface painting and maintenance; appropriate skate guards to ensure a safe experience for skaters; ticketing and skate rentals; EMT/First Aid services; appropriate on-site management; excellent customer service.
- Maintenance of all equipment related to rink operations including, but not limited to, skate walkable flooring, dasher boards, ice resurfacing machines, skate sharpening equipment.
- Staffing: skate guards; ticketing staff; EMT/First Aid, manager-on-duty, customer service
- Skate rentals: staff; skates and other equipment
- Boating and biking operations: staffing; equipment; safety and training (or sublicense)
- Space rentals of rink(s) & multi-purpose rooms; sales; event staff and other as needed (large-scale events are by approval only)
- Marketing and ticket sales: POS system; website; social media; e-blasts; press releases; general promotion; sponsorships
- Internet and telephone service
- Lockers
- Audio systems / AV equipment
- Administrative functions: Finance; HR; IT; contract management
- Risk management: insurance; waivers

Functions the RPO will not be responsible for include:

- Cleaning and general maintenance: PPA staff to oversee facility, perform maintenance and cleaning tasks, and manage inspections; fire safety; pest control; snow removal
- Foodservice: including birthday party catering; special event catering.
- Plumbing repairs
- Trash hauling
- Graffiti removal
- Mechanical systems maintenance: refrigeration; HVAC; electrical
- Splash pad equipment maintenance
- Kitchen equipment; vending machines
- Utilities
- Security (except as needed for large events)

EXHIBIT D

Site Financials

LeFrak Center Annual Gross Revenues

	Rink	Food & Beverage	Biking & Boating	Total	Notes
2013	\$ 274,348			\$ 274,348	Opened late December
2014	\$ 2,447,475	\$ 788,941		\$ 3,236,416	
2015	\$ 3,123,429	\$ 1,138,573	\$ 355,566	\$ 4,617,568	
2016	\$ 2,967,872	\$ 1,097,118	\$ 382,040	\$ 4,447,030	
2017	\$ 2,859,576	\$ 914,616	\$ 433,197	\$ 4,207,389	
2018	\$ 3,379,224	\$ 771,158	\$ 313,114	\$ 4,463,496	
2019	\$ 3,052,902	\$ 679,115	\$ 333,229	\$ 4,065,246	
2020	\$ 1,729,061	\$ 397,161	\$ 176,237	\$ 2,302,459	Pandemic shutdown & restrictions
2021	\$ 4,740,387	\$ 855,136	\$ 248,391	\$ 5,843,914	
2022	\$ 4,708,667	\$ 1,109,325	\$ 224,236	\$ 6,042,228	
2023	\$ 4,213,198	\$ 729,189	\$ 146,691	\$ 5,089,078	

EXHIBIT E

Current Pricing

Winter 2023-2024 Pricing

WINTER 2023-2024			
ITEM	PRICE		
Public Skating		Birthday Party Packages	
Admissions - Weekday	\$ 9.25	Basic/Classic	\$ 625.00
Admissions - Weekend	\$ 13.50	Basic/Classic - Additional Child	\$ 28.00
Skate Rental	\$ 9.50	Enhanced/Ultimate	\$ 799.00
		Enhanced/Ultimate - Additional Child	\$ 34.00
Group Sales - includes rentals and admissions		Add-On - Skate Lesson	\$ 175.00
General Group - Weekday	\$ 15.00		
General Group - Weekend	\$ 18.00	Private Rink Rental	
Non-Profit Group - Weekday	\$ 14.00	1 Hour	\$ 700.00
Non-Profit Group - Weekend	\$ 15.00		
		Retail	
Value Pass		Skate Sharpening	\$ 16.50
Individual Basic	\$ 175.00	Socks	\$ 8.50
Family (up to 3 members)	\$ 490.00	Helmet Rental	\$ 7.00
Additional Family Member	\$ 115.00	Pad Rental	\$ 4.00
Individual Premium	\$ 250.00	Small Bag Check	\$ 7.50
Family (up to 3 members) Premium	\$ 575.00	Large Bag Check	\$ 12.50
Additional Family Member Premium	\$ 115.00	Skate Aids - 30 Mins.	\$ 14.00
		Skate Aids - 60 Mins.	\$ 20.00

Summer 2024 Pricing

2024 Roller Season Pricing			
ITEM	PRICE	BOAT RENTALS: LIFE JACKETS INCLUDED	
Admission Weekday	\$9.00	Pedal Boat (2 Adults & 1 small lap child)	\$32.00
Admission Weekend	\$13.00	Large Pedal Boat (4 Adults & 1 small lap child)	\$42.00
Skate Rentals	\$8.50	Single Kayak	\$22.00
		Double Kayak	\$30.00
BIRTHDAY PARTY PACKAGES			
Classic Pizza/Slider Birthday Bash	\$629.00		
Each Additional Child over 10	\$33.00	BIKE RENTALS: HELMETS INCLUDED	
Ultimate Birthday Bash	\$799.00	Single Surrey (3 Adults & 2 Children 6 & under)	\$32.00
Each Additional Child over 10	\$34.00	Double Surrey (6 Adults & 2 Children 6 & under)	\$42.00
		Deuce Coupe (2 Adults & 2 Children 6 & under)	\$32.00
ROLLER DISCO		Chopper	\$16.00
General advance admission	\$26.00	Quad Sport	\$16.00
General admission at the door	\$31.00	Tandem Bike	\$24.00
General admission + Drink Ticket(s)	\$34.00	Hybrid Multi-Speed Bike	\$22.00
		Cruiser Bike	\$16.00
		Kids Bike	\$11.00
		Tag-a-long	\$11.00

EXHIBIT F

Current Hours of Operation

Public Skating Hours: Ice Skating Season					
COVERED RINK			UNCOVERED RINK		
OPERATING DAY	OPEN	CLOSE	OPERATING DAY	OPEN	CLOSE
MONDAY	11:00 AM	4:30 PM	MONDAY	11:00 AM	7:00 PM
TUESDAY	11:00 AM	4:30 PM	TUESDAY	11:00 AM	7:00 PM
WEDNESDAY	11:00 AM	4:30 PM	WEDNESDAY	11:00 AM	7:00 PM
THURSDAY	11:00 AM	4:30 PM	THURSDAY	11:00 AM	7:00 PM
FRIDAY	11:00 AM	8:30 PM	FRIDAY	11:00 AM	8:30 PM
SATURDAY	1:00 PM	8:30 PM	SATURDAY	11:00 AM	8:30 PM
SUNDAY	12:30 PM	6:00 PM	SUNDAY	11:00 AM	7:00 PM

Public Skating Hours: Roller Skating Season		
OPERATING DAY	OPEN	CLOSE
MONDAY	10:30 AM	6:00 PM
TUESDAY	10:30 AM	6:00 PM
WEDNESDAY	10:30 AM	6:00 PM
THURSDAY	10:30 AM	6:00 PM
FRIDAY	10:30 AM	6:00 PM
SATURDAY	12:00 PM	6:00 PM
SUNDAY	12:00 PM	6:00 PM

EXHIBIT G

License Agreement

LICENSE AGREEMENT

BETWEEN

PROSPECT PARK ALLIANCE, INC.

AND

CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION

for

THE OPERATION AND MAINTENANCE OF THE PROSPECT PARK LAKESIDE
CENTER
AT
PROSPECT PARK,

BROOKLYN

B73-IS

DATED: Nov 20, 2013

2013-052768

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LICENSE AGREEMENT ("License" or "License Agreement") made this 20th day of November, 2013, 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 Prospect Park Alliance, Inc. ("Licensee"), a not-for-profit organization with an address at 95 Prospect Park West, Brooklyn, New York 11215 (Fax No. 718-965-6950).

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

WHEREAS, the Prospect Park Lakeside Center ("Lakeside") is located in Prospect Park in the Borough of Brooklyn, which is property under the jurisdiction and control of Parks; and

WHEREAS, the Licensee has been formed expressly for the purpose of promoting and assisting "in the restoration, maintenance, and management of Prospect Park" and has entered into a License Agreement with Parks made as of July 18, 2010 with respect to Licensee's maintenance and programming responsibilities in Prospect Park (the "M&O Agreement"); and

WHEREAS, the Licensee raised in excess of \$19 million in private funds and assisted with raising an additional \$54 million in city, state and federal funds for the restoration of 26 acres in Prospect Park, including restoring the Prospect Park Lake area and its shoreline, adding five acres to Prospect Park Lake and three acres of green space and the development of Lakeside, a 26,000 sq. ft. facility. Licensee was instrumental to the oversight of the design, development and construction of Lakeside;

WHEREAS, the Commissioner seeks to provide for the operation and maintenance of Lakeside, including two (2) skating rinks, a roller rink during the summer, a café and adjacent rooms, and a bicycle and boat rental at Prospect Park for the accommodation, enjoyment, and convenience of the public; and

WHEREAS, Licensee seeks to operate and maintain Lakeside, including two (2) skating rinks during the winter, a roller rink during the summer, a café and three adjacent private event rooms, and a bicycle and boat rental at Prospect Park for the benefit of the public at Prospect Park, in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee, upon approval from the Franchise and Concession Review Committee ("FCRC"), seek to enter into this sole source License Agreement specifying rights and obligations with respect to the operation and maintenance of Lakeside, including two (2) skating rinks during the winter, a roller rink during the summer, a café and adjacent rooms, and a bicycle and boat rental at Prospect Park.

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 License to operate and maintain, or cause to be operated and maintained, at the Licensed Premises (as hereinafter defined) two (2) skating rinks (one covered and one open) during the Ice Rink Season as defined hereafter ("Covered Rink" and "Open Rink", respectively), a roller rink during the Non-Ice Rink Season as defined hereafter (all rinks collectively, the "Rinks"), a waterplay feature during the Non-Ice Rink Season, a café and three adjacent private event rooms ("Café"), and skate rental and sharpening/repairs, in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner of Parks ("Commissioner"). The operation of the skating rinks during the Ice Rink Season shall include public programming as approved by Parks. Subject to the terms and conditions set forth in this License Agreement, the concession granted hereby may include a bicycle and boat rental, locker rentals, a pro shop, rentals for private events, and vending machines. In addition, with Parks' prior written approval, which shall not be unreasonably withheld, conditioned or delayed, Licensee may utilize pushcarts or other mobile units or stands for uses within the scope of this License (e.g., information, merchandise sales, boat and bike rentals, food service etc.). All plans, schedules, services, menu items, merchandise, rates, fees and prices, and hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. 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 sublicense agreements ("Sublicense Agreements") with third parties ("Sublicensees") to maintain and operate all or any recreational activities and/or the Café in accordance with the terms and conditions set forth herein. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. Two (2) copies of any proposed Sublicense Agreement shall be submitted to Parks with Licensee's written request for approval. The Sublicense for the maintenance and operation of the Café may, with Parks' prior written approval and on such terms and conditions as Parks shall require, include operation of mobile food units ("Mobile Food Units") such as pushcarts.

(i) Any Sublicense Agreement which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require said Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same.

(ii) Licensee shall require said Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this Agreement and indemnifying the City as set forth in Paragraphs 19 and 20 herein.

(iii) 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.

(c) In selecting a Sublicensee for Parks' approval, Licensee shall issue a solicitation in the basic form of a request for proposals ("RFP") with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s)

approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee in accordance with Parks' usual procedures and requirements and subject to Parks' 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. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason.

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. Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with in all material respects (subject to applicable notice and cure periods) and so long as this License is not terminated by Commissioner.

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.

1.5 Licensee may use such name in its operations at the Licensed Premises as shall be approved in advance in writing by Parks. Parks hereby approves the name "Prospect Park Lakeside Center." Parks may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. 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. The City is the owner of the designations and trademarks "Prospect Park" and "Lakeside Center" and variations thereof, and all other designations and trademarks of 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.

II. DEFINITIONS

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

(a) "Alteration" shall mean (excepting ordinary repair and maintenance):

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

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

(b) Intentionally omitted.

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

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

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

(f) Intentionally omitted.

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

(h) Intentionally omitted.

(i) "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.

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

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

(j) (i) "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 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 bike and boat rentals related to the Licensed Premises shall be included in Gross Receipts regardless of where the rental terminates.

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

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 14 herein, but excluding amounts charged by any party which rents the Rink(s) 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.

(k) Unless otherwise approved in advance in writing by Parks, the "Ice Rink Season" shall mean the period each Year during which the Licensee shall open the rinks to the public for ice skating. In the first Year, the Ice Rink Season shall begin upon Notice to Proceed from Parks and shall end by March 30, 2014, unless otherwise approved in writing by the Commissioner, which shall not be unreasonably withheld or delayed. Thereafter, weather permitting, the normal Ice Rink Season will begin no later than November 30 in each calendar year during the Term and end not later than March 15 in the following year, or such other date as shall be approved by Parks. "Non-Ice Rink Season" shall mean the period between the end of any Ice Rink Season and the beginning of the next subsequent Ice Rink Season, except that a period of up to two (2) weeks between each Ice Rink Season and each Non-Ice Rink Season shall be permitted to allow for seasonal changeover (each period referred to as a "Transition Period") during which time the Licensed Premises or portions thereof may be closed to the public. The exact dates are subject to Parks' approval.

(l) "Licensed Premises" or "Premises" shall mean the areas designated as Zone 1 on Exhibit A-1, attached hereto, and shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping. In addition, the Licensed Premises shall include the locations in Zone 2 on Exhibit A-2 hereto that are approved by Parks for operation of Mobile Food Units, a boat rental station, and a bike rental station.

(m) "Licensee's Special Events" shall mean any catered or private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Subject to prior written approval from Parks, Licensee may conduct special events or programs at the Licensed Premises. Specifically, Licensee shall submit to Parks for approval all plans for any events or programs at the Licensed Premises at which there will be more than 300 attendees, and in no event shall the Licensed Premises be completely closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. Moreover, during the Ice Rink Season, at least one of the Rinks must be open during all operating hours to the general public, unless Parks approves otherwise in advance in writing, and during the Non-Ice Rink Season, the Covered Rink shall be open during all operating hours to the general public, unless Parks approves otherwise in advance in writing. All revenue generated through such special events or programs must be reported to Parks as Gross Receipts.

(n) Intentionally omitted.

(o) "Year" or "Operating Year" shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of 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 This License shall become effective upon Parks giving written notice to proceed to Licensee ("Commencement Date") and, unless terminated sooner in accordance with this License Agreement, shall terminate on the same date as the M&O Agreement (July 17, 2015) or the last day of any subsequent renewal periods that are exercised pursuant to this License ("Termination Date" or "Expiration Date"). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the "Term". Parks, in its sole discretion, shall have the option to renew this License for up to three (3) additional five-year periods, provided that Parks has renewed the M&O Agreement for the same periods. Notwithstanding the foregoing, in the event that the M & O Agreement is terminated prior to July 17, 2015, this License shall terminate on the date that the M & O Agreement terminates.

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. In the event of such termination Licensee shall not be obligated to make payments set forth in Section 4 beyond such early termination date, except for balances outstanding and unpaid as of the effect date of termination. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

3.3 Parks may terminate this License for cause as follows:

(a) Should Licensee 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 days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. 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 one (1) day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which

substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

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

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

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

3.7 Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Premises unless such property is held by the Commissioner pursuant to Section 3.5. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned unless such property is held by the Commissioner pursuant to Section 3.5. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Premises during the time prescribed in this Agreement.

3.8 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.

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

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

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

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

IV. PAYMENT TO CITY

4.1 Except for Operating Year 1, when no License fee shall be due, Licensee shall pay the City the License fee for each Operating Year set forth below:

OPERATING YEAR	LICENSE FEE
2	\$100,000
3 (if License renewed)	\$101,000
4 (if License renewed)	\$102,010
5 (if License renewed)	\$103,030
6 (if License renewed)	\$104,060
7 (if License renewed)	\$105,101
8 (if License renewed)	\$106,152
9 (if License renewed)	\$107,214
10 (if License renewed)	\$108,286
11 (if License renewed)	\$109,369
12 (if License renewed)	\$110,462
13 (if License renewed)	\$111,567
14 (if License renewed)	\$112,683
15 (if License renewed)	\$113,809
16 (if License renewed)	\$114,947
17 (if License renewed)	\$116,097

In the final Year of this License Agreement, the License fee shall be prorated based on the actual number of days in such Year as a percentage of 365 days.

4.2 (a) The License fee for each Operating Year beginning in Operating Year 2 shall be paid to the City in equal monthly installments on or before the first day of each month of each Operating Year in accordance with the Schedule of License Fee Payments which will be provided by Parks to Licensee together with the Notice to Proceed. Each monthly payment is due and payable on the date specified on the Schedule of License Fee Payments regardless of whether Licensee has received a bill for it.

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

4.3 (a) On or before the thirtieth (30th) 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 Receipts, 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 roller skating;
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 Receipts 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;
Bike Rental	Gross Receipts from the sale of bike rentals at the Licensed Premises;
Locker Rentals	Gross Receipts from locker rentals at the Licensed Premises;
Boat Rental	Gross Receipts from the sale of boat rentals at the Licensed Premises;
Miscellaneous	Any other sources of income 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 is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License.

4.4 On or before the sixtieth (60th) 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 approved by Parks. Neither Parks nor the City may disclose to any third party any documents or information with respect to Licensee's income or expenses in connection with its operations at the Licensed Premises, except to the extent otherwise required by court order or applicable law (including "freedom of information" laws). For the avoidance of doubt, this prior sentence shall not apply to the Comptroller or any other authorized auditor nor prevent disclosure by the Comptroller or any other authorized auditor of any information derived from audits of this License Agreement.

4.5 (a) Licensee, during the Term of this License, shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales and rental information from each sales or rental transaction. Specifically, except for pushcarts and other mobile units (including Mobile Food Units), 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 dedicated bank account for all deposits related to this concession'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 prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

(c) 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 shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License.

4.6 In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 through 4.5 hereinabove, Licensee may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

V. RIGHT TO AUDIT

5.1 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.

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

5.3 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.

VI. INTENTIONALLY OMITTED

VII. ALTERATIONS

7.1 (a) Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

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

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

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

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

(c) Commissioner may, in her discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect. Parks shall use reasonable efforts to give Licensee at least fourteen days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks shall use its reasonable efforts to perform such work in a way which minimizes interference with Licensee's operations at the Licensed Premises.

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

other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. Also, for purposes of this provision, "Capital Improvements" shall mean all construction, reconstruction, renovations or Alterations of or to the Licensed Premises.

VIII. FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment 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.

8.2 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 substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall, 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 and restore the Licensed Premises to Parks in a condition no worse than at the commencement of the Term.

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

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

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

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

8.7 The equipment to be removed by Licensee pursuant to this 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 may have caused to the Licensed Premises.

IX. UTILITIES

9.1 (a) City shall directly pay for all electricity, water, gas, heat, coolant and sewer costs associated with the operation of the Licensed Premises with the exception of gas and electricity related to the operation of the Café which shall be the responsibility of Licensee. In the event that the Gross Receipts from the operation of the Covered Rink and the Open Rink (including, without limitation, admissions, skate rentals, ice rentals, locker rentals, Licensee's Special Events, skating instruction, skate sharpening/repairs, pro shop and food and beverage service) exceed \$7,000,000 in any Operating Year, Licensee and Parks shall confer in good faith as to whether Licensee, or any Sublicensee, shall pay for the electricity, water, gas, heat, coolant and sewer costs associated with the operation of the Licensed Premises in addition to the gas and electricity related to the operation of the Café which is already the responsibility of Licensee.

(b) 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. 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.

9.2 Licensee shall provide separate metering for the Café, and shall require any Sublicensee operator of the Café to pay directly for all utilities associated with their applicable operations at the Licensed Premises under a properly authorized sublicense or subcontract agreement in accordance with Section 14 hereof.

X. OPERATIONS

10.1 (a) Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate at the Licensed Premises as set forth herein and only when the park in which the Licensed Premises is located is open. All hours of operation are subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. 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 which shall not be unreasonably withheld or delayed. Annexed hereto as Exhibit B is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. At its sole 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 under the License Agreement.

(b) Licensee shall 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.

(c) Licensee shall operate and maintain at the Licensed Premises: the Café, the Covered and Open Rinks as skating rinks during the Ice Rink Season, the Covered Rink as a roller skating rink during the Non-Ice Rink Season, and the Open Rink as a playground with an interactive water feature during the Non-Ice Rink Season. Licensee may also operate and maintain at the Licensed Premises a boat rental facility, a bicycle rental facility and the pro shop referenced in Section 10.1(h) hereof.

(d) Licensee must provide all equipment necessary for the successful operation of the whole concession granted hereby, which for the Rinks may include, but is not limited to, dasher panels, 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 and Non-Ice Rink Seasons.

(e) Notwithstanding anything to the contrary herein, Parks shall provide, at its sole cost and expense, the staffing necessary to monitor, maintain and repair the mechanical, electrical and plumbing systems at the Licensed Premises excluding the Café.

(f) At the end of each Ice Rink Season, the Licensee, at its sole cost and expense, shall melt the ice and perform necessary repairs and maintenance for the operation of the Open Rink as a playground with an interactive water feature.

(g) Licensee shall operate a well stocked skate rental and sharpening/repairs facility at the Licensed Premises. All equipment to be rented at the skate rental and sharpening/repairs facility and the proposed prices of those items are subject to Parks' prior, written approval.

(h) Licensee may operate and maintain a well stocked pro shop, including the sale of merchandise. The location, size, merchandise and prices of the pro shop are subject to Parks' prior written approval.

(i) Licensee shall operate and maintain year-round (excluding Transition Period(s)), a properly licensed and amply stocked Café at the Licensed Premises. Such Café must be of a high standard of quality. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages.

(j) Licensee may operate and maintain a high quality, well stocked bike rental facility for the use and enjoyment of the general public. Licensee shall provide free helmets to all riders and encourage riders to wear a helmet. Licensee shall supply sufficient bicycle maintenance staff to perform regular maintenance and repairs on its bicycle and equipment rental fleet. Licensee's maintenance program shall include:

- (i) Daily equipment checks;
- (ii) Rental/return safety checks;

- (iii) Weekly tune ups; and
- (iv) Maintenance recordkeeping.

(k) Licensee may operate and maintain a fleet of boats for a boat rental service at the Licensed Premises. Licensee shall provide life vests and all other safety equipment to customers free of charge.

(l) Licensee shall comply with all national safety guidelines and Federal, State, and City laws, rules, and regulations related to the operation and maintenance of bike and boat rental facilities.

(m) 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 or non-park-related events. 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 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 without the prior written approval of Parks and the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served by Licensee in the immediate vicinity of the Café and/or in a cordoned-off area if exterior seating is used and must be consumed at the Café within designated areas. 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.

(q) 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 License 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.

(r) Licensee may place tables, chairs, umbrellas, benches, and bleachers at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, benches, bleachers, and food service equipment are subject to Parks' prior, written approval. Licensee must ensure free and open public access to any outdoor seating areas.

10.2 Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices. Annexed hereto as Exhibit B is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder.

10.3 (a) Smoking anywhere on the Licensed Premises is strictly prohibited.

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

(c) Licensee is prohibited from selling any beverages in glass bottles, except at Licensee's Special Events. All beverages shall be in non-glass, shatter-proof containers.

(d) Licensee shall adhere to and enforce the prohibitions contained in this Section 10.3.

10.4 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. 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 Department of Buildings ("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, such approval not to be unreasonably withheld or delayed. 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 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 for each Ice Rink Season during the Term, as required by DOB

10.5 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 in such a manner as to maintain a very high health inspection rating.

10.6 RESERVED.

10.7 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.

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

10.9 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:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises (except for the mechanical, electrical and plumbing systems at the Licensed Premises excluding the Café referred to in Section 10.1(e) above); and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

10.10 Licensee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Licensed Premises, including, but not limited to, installing ramps, as needed, providing ADA signage, installing ADA accessible counters in the Café, providing ADA-compliant sales and service counters, and providing ADA-compliant bike pods, skate sleds and kiosks. Licensee may also be required by Parks to provide additional accessibility features. Licensee shall comply with all City, State and Federal laws relating to access for persons with disabilities. 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 all advertising by Licensee. Licensee shall include in its advertising and promotion program, described in Section 10.15 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.

10.11 Pursuant to a plan 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 which shall not be unreasonably withheld or

delayed. Licensee shall secure the Licensed Premises and any equipment every evening before closing for the day during the Term.

10.12 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.

10.13 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.

10.14 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 use its commercially reasonable efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of same.

10.15 Licensee may establish an advertising and promotion program, subject to Parks prior written approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks, or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner in her reasonable discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior reasonable approval as to design and distribution of all advertising and promotional materials.

10.16 The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display or placement of tobacco advertising shall be prohibited. 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.

10.17 Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee shall be responsible for obtaining any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval which shall not be unreasonably withheld or delayed.

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

10.19 Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a satisfactory 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 the reasonable timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

10.20 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 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.21 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.

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

10.23 Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, should Licensee fail to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the time frame set forth in such notice. If Licensee fails to cure the

violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess Licensee as liquidated damages payable to Parks Five Hundred (\$500.00) Dollars per day 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.

10.24 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 concessionaires to report illegal vendors by calling 311.

10.25 Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense, will be responsible for the off-season storage of all equipment and personal property. Licensee shall 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 which shall not be unreasonably withheld or delayed. Licensee will be required to secure all outdoor equipment, if any, on a nightly basis and anytime the concession granted hereby is closed.

10.26 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.

10.27 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 approved in writing by Parks which shall not be unreasonably withheld or delayed.

10.28 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 which shall not be unreasonably withheld or delayed. A cabaret license will be strictly prohibited at the Licensed Premises.

10.29 Licensee shall maintain regularly the bicycles which it rents and purchase new bikes as necessary. Licensee shall also distribute safe riding pamphlets, brochures, and videos. Licensee's staff members shall be trained to work in a recreational outdoor environment and in first aid and emergency situations.

10.30 Licensee shall prominently display at the bike rental facility and the Licensed Premises such stickers as Parks shall prescribe and Parks' rules for riding bicycles on parkland.

10.31 Licensee shall post signage prominently at the bike rental facility and the Licensed Premises setting forth the substance of the requirements on New York Vehicle and Traffic Law §1238, including, without limitation, that (1) no person operating a bicycle shall allow a person who is under one year of age to ride as a passenger on a bicycle, (2) no person operating a bicycle shall allow a person one or more years of age and less than five years of age to ride as a passenger on a bicycle unless such person is wearing a helmet that complies with the law and is placed on a separate seat attached to the bicycle, (3) no person operating a bicycle shall allow a person five or more years of age and less than fourteen years of age to ride as a passenger on a bicycle unless such person is wearing a helmet that complies with the law and (4) no person, one or more years of age and less than fourteen years of age, shall operate a bicycle unless such person is wearing a helmet that complies with the law.

10.32 Licensee may, with Parks' prior written approval, which shall not be unreasonably withheld, 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 C-1 and C-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, Licensee shall remove any vending machines on the Licensed Premises.

XI. MAINTENANCE, SANITATION AND REPAIRS

11.1 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, the maintenance of and the making of all necessary repairs to the entire Licensed Premises (except for the systems for which Parks is responsible under Section 10.1(e) hereof), all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, restrooms (including the stocking of supplies), equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures during the Term. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval which shall not be unreasonably withheld or delayed.

11.2 During Term, Licensee shall maintain the Licensed Premises to the reasonable satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner.

11.3 At Parks' request during the Term, upon reasonable prior written notice Licensee shall conduct site inspections at the Licensed Premises with a representative of Parks. Such inspections shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee. Licensee shall make all necessary repairs in accordance with Section 11.1 during the Term.

11.4 During the Term, Licensee shall be responsible for, at its sole cost and expense, clean-up of all waste, garbage, refuse, rubbish and litter at the Licensed Premises and the removal of all snow from the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks. After collection by Licensee, Parks will remove all waste, garbage, refuse, rubbish and litter from the Licensed Premises in accordance with a

schedule to be agreed between Licensee and Parks. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' reasonable satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition during the Term.

11.5 During the Term Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval which shall not be unreasonably withheld or delayed. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards. Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without the prior written approval of Parks. Any attachments to the trees, such as lights, will not be permitted.

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

11.7 At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises during the Term hereof. Such graffiti removal shall be commenced promptly after the appearance of any such graffiti and shall continue until such graffiti is removed.

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

11.9 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 which shall not be unreasonably withheld or delayed.

XII. APPROVALS

12.1 Licensee is solely responsible for obtaining all government approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders to fulfill this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses and shall not unreasonably withhold or delay its consent to signing, where its signature is needed, any accurate application made by Licensee required to obtain such approvals, permits and licenses.

12.2 Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or her duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or her duly authorized representative.

XIII. RESERVATION FOR SPECIAL EVENTS

13.1 (a) Licensee shall cooperate with Parks in connection with unanticipated events and emergencies at the Licensed Premises.

(b) Parks, acting on behalf of the City, reserves the right to host up to three annual events at the Licensed Premises, including benefits and other non-profit or public events. The dates of such events shall be mutually agreed upon by both parties and shall be reserved in writing not less than one month in advance.

XIV. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

14.1 Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein which approval shall not be unreasonably withheld or delayed. The Commissioner may request any additional information she deems reasonably necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than ten percent (10%) in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any

circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Section 14.

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than ten percent of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations, which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

14.3 No consent to or approval of any assignment or sublicense granted pursuant to this Section 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

XV. PARKS CONSTRUCTION

15.1 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. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one week's 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' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee.

XVI. COMPLIANCE WITH LAWS

16.1 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.

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

XVII. NON-DISCRIMINATION

17.1 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.

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

XVIII. NO WAIVER OF RIGHTS

18.0 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.

XIX. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

19.0 Notwithstanding the indemnification provision of the M&O Agreement, Licensee shall indemnify the City in accordance with this Section 19 as follows:

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

B. Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

D. Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively "Environmental Laws").

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

19.2 A. To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Licensee, the City and its officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

XX. INSURANCE

20.1 A. Throughout the Term, Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits or other types of insurance if, in the reasonable opinion of Commissioner, Licensee's operations warrant it.

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

20.2 A. Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as the most recent edition of ISO Form CG 2026, and the limits for the City shall be no lower than Licensee's.

C. If Licensee or a contractor or sublicensee of Licensee serves alcoholic beverages anywhere on the Licensed Premises, Licensee shall carry or cause to be carried liquor law liability coverage 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 insureds. Such insurance shall be effective prior to the commencement of any such operations and continue throughout such operations. At her sole discretion, the Commissioner may increase or decrease the limit(s) if the Commissioner believes that the nature of such operations merits an increase or decrease.

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

20.4 A. With regard to all operations under this License, Licensee shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

B. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

20.5 A. Licensee shall maintain comprehensive "All Risk" or "Special Perils" form property insurance covering all buildings, structures, equipment and fixtures on the Licensed Premises ("Concession Structures"), whether existing at the Commencement Date or built at any time before the Termination Date. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water, flood, 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 Loss Payee as their interests may appear.

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

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

20.6 Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products (other than to operate vehicles in connection with Licensee's use of the Property), asbestos, lead, pcb's or any other hazardous materials.

20.7 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. There shall be no self-insurance program with regard to any insurance required under this Article unless approved in writing by the Commissioner. 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.

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

E. 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.

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

20.8 A. Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to execution of this License Agreement.

B. For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, Licensee shall submit one of the following:

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);

4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

C. For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (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 Broker" in the form required by the Commissioner or certified copies of all policies 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.

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 Concession. Such Certificates of Insurance shall comply with subsections (B) and (C) directly above.

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

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

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

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

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

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

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

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

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

G. Licensee waives all rights against the City, including its officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

H. In the event Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an additional insured under such insurance, Licensee shall ensure that such entity also names the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO form CG 20 26.

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

XXI. WAIVER OF COMPENSATION

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

21.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are

required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

XXII. INVESTIGATIONS

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

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

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

(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 22 (d) below without the City incurring any penalty or damages for delay or otherwise.

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

(i) The disqualification for a period not to exceed five years from the date of an adverse determination of any person or entity of which such person was a member at the time

the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this 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.

XXIII. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

23.1 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.

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

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

23.4 If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action,

the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

XXIV. WAIVER OF TRIAL BY JURY

24.1 (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.

XXV. CUMULATIVE REMEDIES - NO WAIVER

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

XXVI. EMPLOYEES

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

XXVII. BACKGROUND CHECKS

27.1 (a) For purposes of this Paragraph, 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 provided in writing to Licensee, including, but not limited to, the following:

- (i) Licensee will be responsible for screening of all personnel, including:
 - (A) substantiating credentials, including, but not limited to, School-Age Child Care (SACC) Certification in accordance with the New York Codes, Rules, and Regulations ("NYCRR") under 18 NYCRR 414; and,
 - (B) 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; 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 Licensee's knowledge, have not completely and truthfully reported information concerning their criminal convictions;
 - (B) to the extent disclosed by a background check, whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; and,
 - (C) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.
- (b) 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 Paragraph 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.

XXVIII. INDEPENDENT STATUS OF LICENSEE

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

XXIX. INTENTIONALLY OMITTED

29.0 Intentionally Omitted.

XXX. CONFLICT OF INTEREST

30.0 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.

XXXI. PROCUREMENT OF AGREEMENT

31.1 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.

31.2 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.

XXXII. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

32.0 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.

XXXIII. ALL LEGAL PROVISIONS DEEMED INCLUDED

33.0 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.

XXXIV. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

34.0 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.

XXXV. JUDICIAL INTERPRETATION

35.0 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.

XXXVI. MODIFICATION OF AGREEMENT

36.0 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.

XXXVII. NOTICES

37.0 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 Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner. Notices may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement, which notices shall be effective upon transmission;

however, a confirmation copy of any fax notice shall thereafter, within a reasonable time, be sent by one of the other permitted forms of notice under this Section 37.

XXXVIII. LICENSEE ORGANIZATION, POWER AND AUTHORITY

38.0 Licensee represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.


XXXIX. MISCELLANEOUS

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

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

CITY OF NEW YORK DEPARTMENT OF
PARKS & RECREATION

PROSPECT PARK ALLIANCE, INC.

By: 
Elizabeth W. Smith
Assistant Commissioner for Revenue and Marketing

By: _____
Emily Lloyd
President

Dated: 11/20/13

Dated: _____

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

 11/13/13
Acting Corporation Counsel

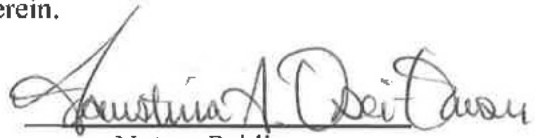
STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this ^{5th} day of ~~NOVEMBER~~ 2013 before me personally came Elizabeth W. Smith to me known, and known to be the Assistant Commissioner for Revenue and Marketing 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.

Faustina A. Osei-Owusu
Notary Public, State of New York
No. 01086232313
Qualified in Bronx County
Commission Expires December 6, 2014


Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this day of , 2013 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the _____ of Prospect Park Alliance, 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.

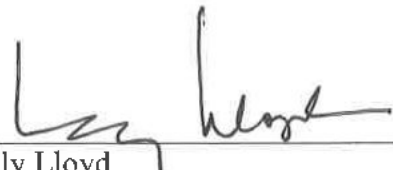
Notary Public

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

PROSPECT PARK ALLIANCE, INC.

By: _____
Elizabeth W. Smith
Assistant Commissioner for Revenue and Marketing

By:  _____
Emily Lloyd
President

Dated: _____

Dated: 11/20/13

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK

SS:

COUNTY OF NEW YORK

On this ^{21st} day of November, 2013 before me personally came Elizabeth W. Smith to me known, and known to be the Assistant Commissioner for Revenue and Marketing 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.

Faustina A. Osei-Owusu
Notary Public, State of New York
No. 01OS6232313
Qualified in Bronx County
Commission Expires December 6, 2014

Faustina A. Osei-Owusu
Notary Public

STATE OF NEW YORK

SS:

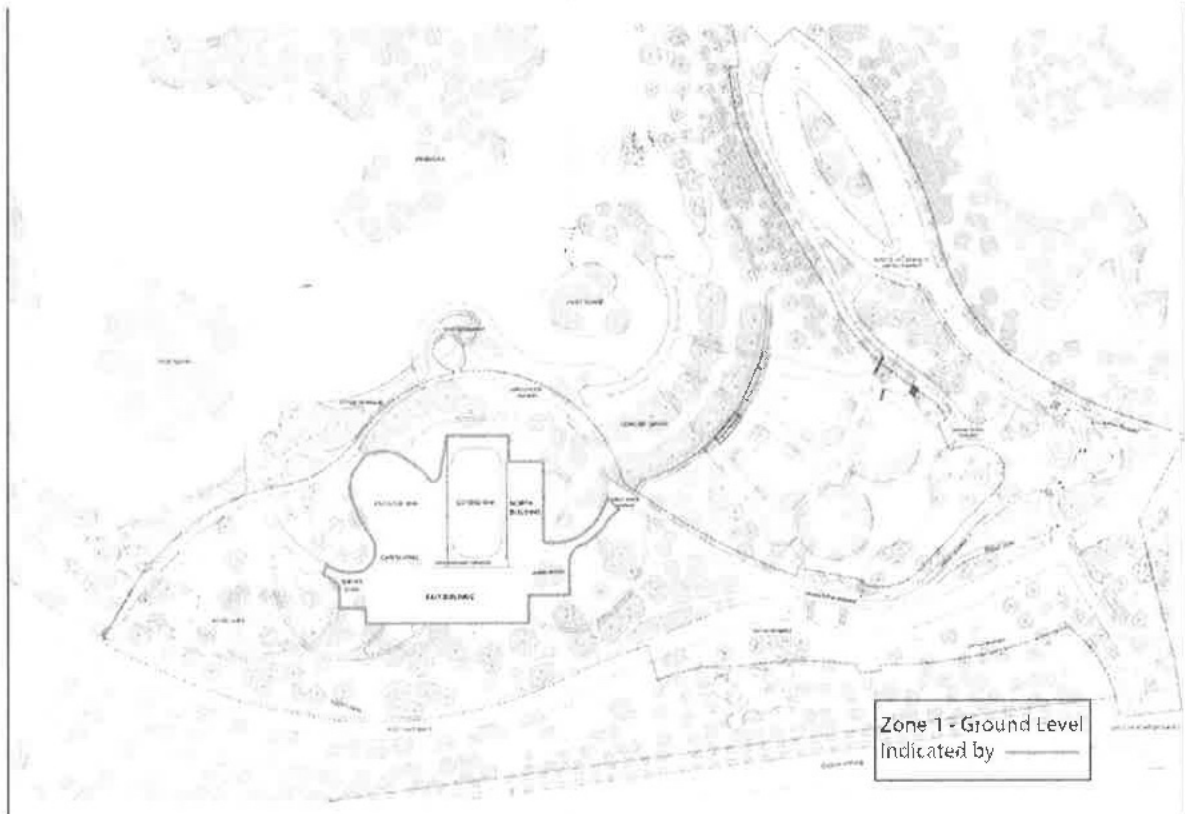
COUNTY OF Kings

On this ^{9th} day of November, 2013 before me personally came ^{EMILY LLOYD} to me known and who, being duly sworn by me, did depose and say that (s)he is the PRESIDENT of Prospect Park Alliance, 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.

Brenda V. Sammarco
Notary Public

Brenda V. Sammarco
Notary Public - State of New York
No. 01-SA6058071
Qualified in Richmond County
My Commission Expires: 04-30-20 12

EXHIBIT A1



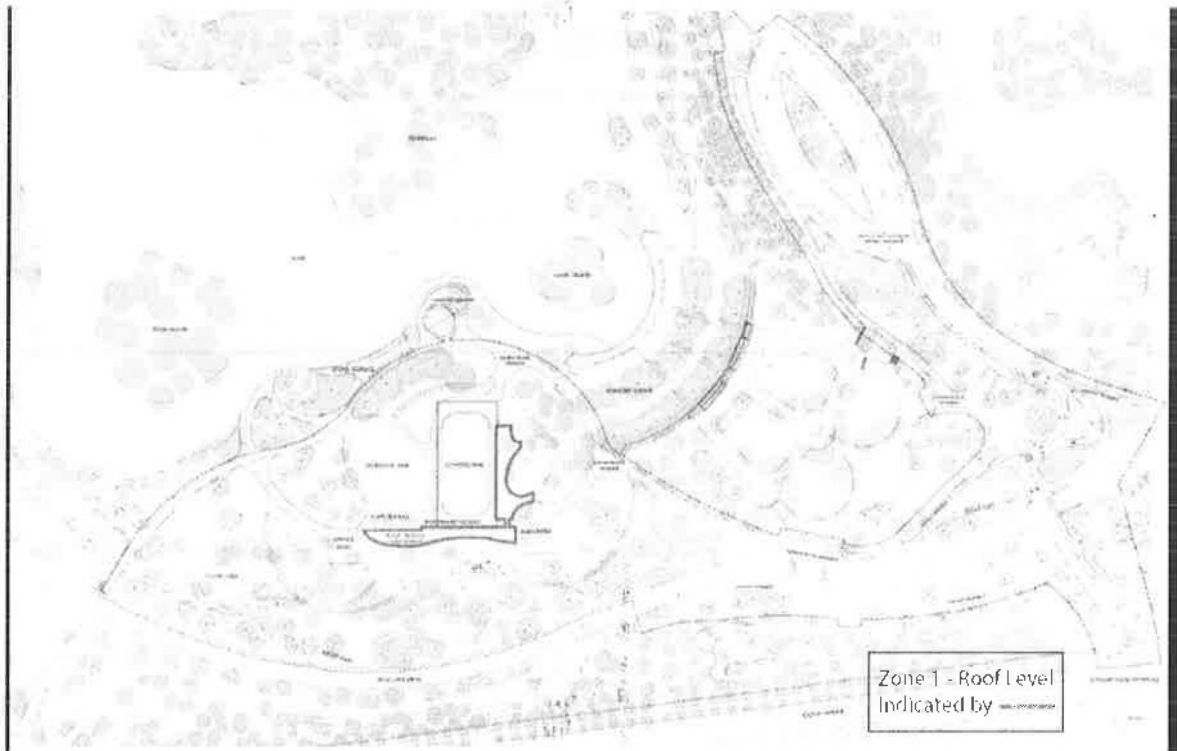


EXHIBIT A2

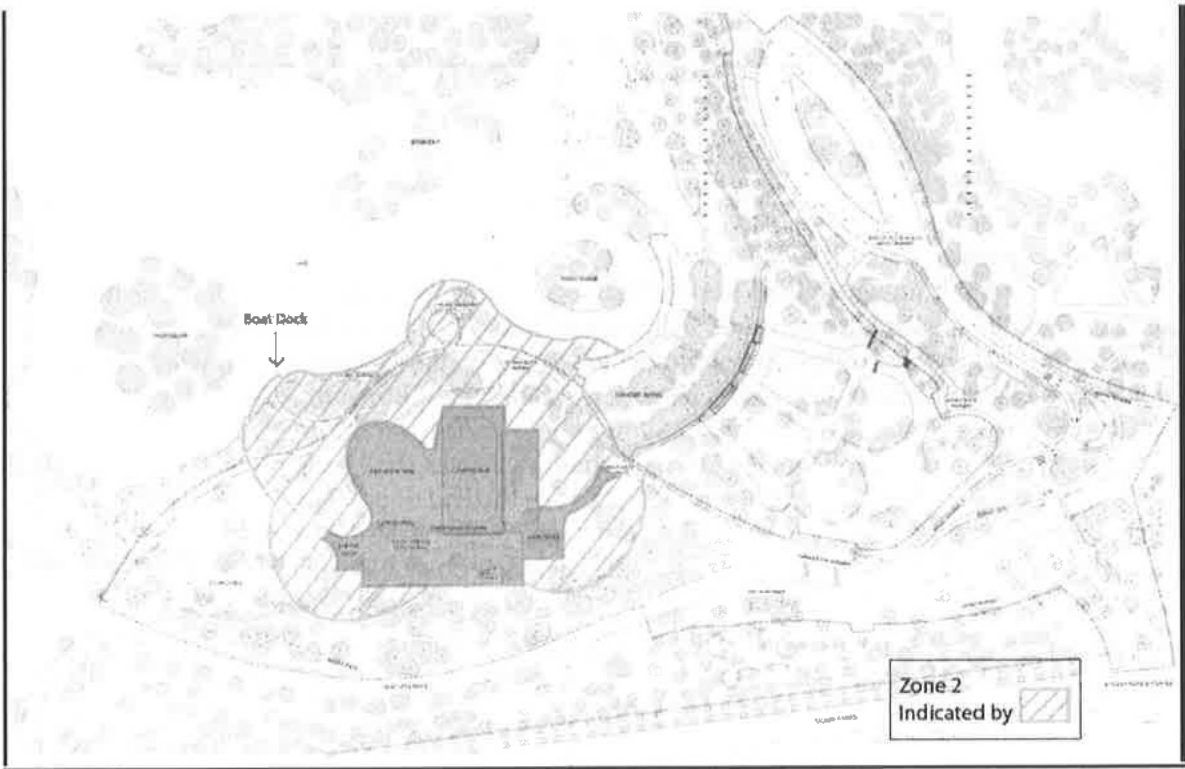


EXHIBIT B

SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES

MINIMUM PUBLIC HOURS OF OPERATION

Length of Season

Unless otherwise approved in advance in writing by Parks, the "Ice Rink Season" shall mean the period each Year during which the Licensee shall open the rinks to the public for ice skating. In the first Year, the Ice Rink Season shall begin upon Notice to Proceed from Parks and shall end by March 30, 2014, unless otherwise approved in writing by the Commissioner, which shall not be unreasonably withheld or delayed. Thereafter, weather permitting, the normal Ice Rink Season will begin no later than November 30 in each calendar year during the Term and end not later than March 15 in the following year, or such other date as shall be approved by Parks. "Non-Ice Rink Season" shall mean the period between the end of any Ice Rink Season and the beginning of the next subsequent Ice Rink Season, except that a period of up to two (2) weeks between each Ice Rink Season and each Non-Ice Rink Season shall be permitted to allow for seasonal changeover (each period referred to as a "Transition Period") during which time the Licensed Premises or portions thereof may be closed to the public. The exact dates are subject to Parks' approval.

Minimum Public Hours of Operation

Ice Rink Season - Ice Skating

Covered Rink

Friday – 3pm-9pm
Saturday – 10am-10pm
Sunday - 10am-6pm

Uncovered Rink

Friday – 3pm-9pm
Saturday – 10am-10pm
Sunday - 10am-6pm

Additionally, a further 20 hours per week shall be provided during Monday-Thursday on one and/or other of the two rinks

Non-Ice Rink Season – Roller Skating

Friday – 3pm-8pm
Saturday – 10am-9pm
Sunday – 10am-6pm
Additionally, 12 hours per week shall be provided during Monday-Thursday

Café - Ice Rink Season

Same as public ice skating hours

Café - Non-Ice Rink Season

Open when public roller skating is available

Waterplay

Memorial Day through Labor Day, daily, 10am to sunset

Prices:

Ice Rink Admissions: \$6.00 weekdays, \$8.00 weekends and holidays

Ice skate rental: \$5.00 at all times

For all other items and activities, Licensee will submit proposed prices for Parks' approval at least 30 days before such items are first offered for sale or rental.

EXHIBIT C-1
Citywide Beverage Vending Machines Standards

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) Specifications regarding the product mix:

- 1) No more than two columns (or "buttons") may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).
- 2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or "buttons"). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
- 3) The remaining products must be ≤ 25 calories per 8 oz.

B) Specifications regarding product display placement:

- 1) Water must be placed in the position with the highest selling potential.
- 2) "High Calorie" beverages (defined as any beverage > 25 calories per 8 oz) must be placed in the position with the lowest selling potential.
- 3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.
- 4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) Specifications regarding size:

- 1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.
- 2) All water and seltzer selections must be at least 12 oz.
- 3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

D) Calorie labeling:

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.
(adapted from HC §81.50)

E) Promotional space:

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8oz) and/or healthy activities.

F) Price:

- 1) Pricing models that encourage healthy choices (e.g. by establishing lower prices for healthy beverage choices (≤ 25 calories per 8 oz) relative to "High Calorie" beverages (> 25 calories per 8 oz)) are encouraged.

For Vending Locations Regularly Used by Children age 18 and under

A) Specifications regarding the product mix:

- 1) Beverage vending machines can only include:
 - Water
Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
 - Unsweetened milk, 1% or nonfat only
 - Beverages with ≤ 25 calories per 8 oz
 - Carbonation and caffeine are allowed
- 2) Prohibited:
 - Artificial sweeteners
 - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
 - Artificial flavors and colors
- 3) If the location is regularly used by programs serving children age 12 or younger (e.g. afterschool locations, summer camp), in addition to the standards above, products:
 - Should not be caffeinated
 - Should be ≤ 10 calories per 8 oz

B) Calorie labeling:

- 1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.

(adapted from HC §81.50)

C) Promotional space:

- 1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8 oz) and/or healthy activities.

Note that New York City beverage vending standards may be revised or updated in the future. Vendors would have time to come into compliance with any changes.

EXHIBIT C-2

New York City Food Standards Part III: Standards for Food Vending Machines

The Standards for Food Vending Machines were enacted December of 2011, pursuant to Executive Order 122. These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines. Follow these standards to make vending machine choices healthier for employees and visitors.

Snack Standards

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

- 1) Require that 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
 - Combination products of dried fruit and nuts 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
 - Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)
- 2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.
- 3) Require that calorie information is posted for each food item, as packaged.

EXHIBIT H

Sick Time Rider

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 *et seq.* (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for 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 Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;
2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;
3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;
4. to file a complaint or domestic incident report with law enforcement;
5. to meet with a district attorney's office;
6. to enroll children in a new school; or
7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an

employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer .

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.