

**LICENSE AGREEMENT**

**BETWEEN**

**AMG RETAIL I LLC**

**AND**

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

*for*

**RENOVATION, OPERATION, AND MAINTENANCE OF SIX (6) GAS STATIONS,  
WITH THE OPTION FOR FOOD SERVICE**

**IN THE BOROUGHS OF BROOKLYN, QUEENS, AND THE BRONX**

**Q21-B-GS**

**Q84-GS**

**Q84-A-GS**

**X150-GS**

**X150-A-GS**

**B166-D-GS**

DATED: \_\_\_\_\_, 2024

Exhibit A	Licensed Premises
Exhibit B	Monthly Report of Gross Receipts
Exhibit B-1	Surcharge Payment Report
Exhibit C	Schedule of Approved Hours and Rates
Exhibit D	Schedule of Capital Improvements
Exhibit E	DOHMH Vending Machine Guidelines
Exhibit F	NYC Earned Safe And Sick Time Act Contract Rider
Exhibit G	Certificates of Insurance/Certification by Broker or Agent
Exhibit H	Payment Bond/Payment Guarantee

DRAFT

**LICENSE AGREEMENT** (“License Agreement” or “License”) made this \_\_\_ day of \_\_\_\_\_, 2023 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (revenue@parks.nyc.gov), and AMG Retail I LLC (“Licensee” or “Concessionaire”) registered to do business in New York, whose address is 555 S Columbus Avenue, Suite 201, Mt Vernon, NY 10550.

**WITNESSETH**

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

**WHEREAS** six gas stations (a/k/a “roadside plazas”) located along Shore Parkway in the Borough of the Brooklyn, the Grand Central Parkway in the Borough of Queens, and the Major Deegan Expressway in the Borough of the Bronx are property under the jurisdiction of Parks; and

**WHEREAS**, Parks desires to provide for the renovation, operation and maintenance of the six roadside plazas, with the option of providing food service, for the accommodation of and use by the public in accordance with the terms set forth herein; and

**WHEREAS**, the Licensee desires to renovate, operate and maintain six roadside plazas, with the option of providing of food service, for the benefit of the public in accordance with the terms set forth herein; and

**WHEREAS**, Parks has complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) for the selection of Licensee, including the issuance of a Request for Proposals (“RFP”) for the renovation, operation, and maintenance of the six roadside plazas with the option of providing food service as provided for in this License Agreement; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the renovation, operation and maintenance of the six roadside plazas with the option of providing food service.

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

**1. GRANT OF LICENSE**

**1.1 (a)** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to renovate, operate and maintain six roadside plazas consisting of gasoline service stations, food service facilities, and public restrooms, and further, as proposed by Licensee and with Parks’ written approval, providing services such as vending machines, electric vehicle charge stations, and seasonal farm stands, for the use and enjoyment of the general public in accordance with the provisions herein and to the satisfaction of the Commissioner (the “Licensed Premises”).

(b) The “Licensed Premises” means the six (6) roadside plazas and other areas designated as annexed in **Exhibit A**, as well as any structures and improvements, constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping therein. The locations of the six (6) roadside plazas are as follows:

1. Shore Parkway (center mall) near exit 11s, Flatbush Avenue, Brooklyn (Property Number B166D-GS)
2. Grand Central Parkway (westbound) at 106th Street and near LaGuardia Airport, Queens (Property number Q84-GS)
3. Grand Central Parkway (eastbound) at 104th Street and near LaGuardia Airport, Queens (Property number Q84-A-GS)
4. Grand Central Parkway (center mall) at Cunningham Park, near the 188<sup>th</sup> Street exit, Queens (Property number Q21-B-GS)
5. Major Deegan Expressway (northbound) near the East 233rd Street exit, Van Cortlandt Park, the Bronx (Property Number X150-A-GS)
6. Major Deegan Expressway (southbound) near the East 233rd Street exit, Van Cortlandt Park, the Bronx (Property Number X150-GS)

**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 for the renovation, operation, and maintenance of the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements (as defined in Section 2.1(b)) required by this License Agreement. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Licensee’s failure to fulfill any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner subject to all applicable notice and cure periods. Parks shall cooperate with Licensee in obtaining any required approvals, permits or other licenses.

**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 and so long as this License is not terminated by the Commissioner in accordance with the terms of this License.

**1.4** Licensee shall provide, at all, full and free access to the Licensed Premises to the Commissioner or the Commissioner’s representatives and to other City, State, and federal officials having jurisdiction for inspection purposes and to ensure Parks’ satisfaction with Licensee’s compliance with the terms of this License Agreement. Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises.

**1.5 (a)** Any business or trade name, which Licensee proposes to use in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the Commissioner’s prior written approval provided, however, that the Commissioner hereby approves the use of the trade names “Atlantis”, “Atlantis Fresh Market”, “Dunkin’ Donuts”, “Exxon”, “Mobil”, “Shell”, “Sunoco”, “Citgo”, “BP”, “Valero”, “Sinclair”, “Gulf”, and

“Conoco.” Licensee represents and warrants that Licensee has all right, title and interest in the approved trade names above, or has acquired or properly licensed such right, title and interest, and that to the extent Licensee shall cease to possess such right, title, or interest, it shall immediately notify Parks and cease to use such trade names in connection with the operations under this License Agreement.

(b) All intellectual property rights in the Licensed Premises, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks, including Parks’ signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications are the property of the City (“City IP”). Parks may require that the City own the portion of any new name selected by Licensee for use at the Licensed Premises that indicates Parks’ property or uses a pre-existing facility name or otherwise contains any City IP. The City will not own any portion of any new name that consists of the name, portrait, or signature of a living or deceased individual or identifier that is not otherwise associated with Parks’ property. Use of City IP may be used only pursuant to a separate written agreement between the City and Licensee. Parks reserves the right to approve of any name(s) selected by the Licensee for the Licensed Premises. Parks may issue a separate Request for Proposals for naming rights of the facility or portions thereof. In the event Parks solicits for and selects a proposal for naming rights, such name will not negatively affect Licensee’s ability to operate the Licensed Premises pursuant to this License, or negatively affect Licensee’s use of trade names that have been approved by the Commissioner for use at the Licensed Premises. Licensee shall be required to use the name that Parks selects.

(c) Licensee may not use any City IP as a part of their trade, business, company, LLC or D/B/A name, nor may they incorporate under the laws of any State using any City IP as a part of their trade, business, company, LLC or D/B/A name. To the extent that Licensee has already so incorporated, they will be required to amend their registration and remove from their trade, business, company, LLC or D/B/A name that portion that contains any City IP.

## **2. 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) “Capital Improvements” shall mean all construction, reconstruction, or renovation of the Licensed Premises, and shall include architectural, and design fees necessary to implement the Capital Improvements, but not include the Design Review Fee referenced in Section 6.2. Capital Improvements also include all Alterations and “Fixed and Additional Fixed Equipment,”

as that term is defined in Section 2.1(k) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises. For example, routine painting and repair of minor wear and tear is considered routine maintenance and would not be accepted as capital investment Capital Improvements shall include those activities described in Sections 6.1 – 6.4 and the Schedule of Capital Improvements attached as **Exhibit D**.

(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 the Commissioner’s designee.

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

(f) “Consumer Price Index” and “CPI” shall mean the Consumer Price Index for all urban consumers; all items indexed (C.P.I.U.) for the New York, New York/ Northeasters New Jersey area, by the United States Department of Labor, Bureau of Labor Statistics. In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the increase shall be made with the use of conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics for the New York City geographic area. In the event the index shall cease to be published, then for the purpose of this License Agreement there shall be substituted for the index such other index, as Parks and Licensee shall agree upon.

(g) “CPI Adjustment” means an adjustment made by multiplying the dollar amount to be adjusted by a fraction, the numerator of which shall be the CPI for the calendar month prior to the month in which the adjustment is to occur, and the denominator of which shall be the CPI for the calendar month prior to the Commencement Date.

(h) “Expendable Equipment or “Personal Equipment” shall mean all equipment, other than Fixed and Additional Fixed Equipment provided by Licensee.

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

(k) “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.

**(l) (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 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. The total Surcharge Payment shall be deducted from Gross Receipts in calculating the percentage fee payable to the City under Section 4.1(a).

**(ii)** Gross Receipts shall include all funds or receipts of any kind received by Licensee from or in connection with any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises and shall include all receipts of Licensee for 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 One Thousand Dollar (\$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.

**(iii)** Gross Receipts shall include all funds or receipts of any kind received by Licensee, sublicensee, or other operator(s) from all sponsorships from or in connection with the Licensed Premises under a properly authorized sponsorship agreement as approved by Parks, whether in cash or as discounts against purchase price of materials, equipment, or commodities.

**(iv)** Gross Receipts shall include all funds or receipts of any kind received by Licensee, sublicensee, or other operator(s) from any and all sales made from the use of, or in connection with, the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Article 14 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee’s net receipts from such vending machines shall be included in Gross Receipts. Further, Gross Receipts shall include Licensee’s income from sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee’s subcontractors or sublicensees, unless otherwise approved by Parks. For the avoidance of doubt, Gross Receipts shall not include any contributions to Capital Improvements by a sublicensee or subcontractor under a properly authorized sublicensee or subcontract.

**(v)** 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, as defined below, transmitted by Licensee

directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (v):

**(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). 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. 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.

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

**(o)** “Licensee’s Special Events” shall mean any ticketed or private function or program at the Licensed Premises, excluding “Parks’ Special Events,” as defined in Article 13 of this Agreement.

**(p)** “Substantial Completion” or “Substantially Complete” shall mean, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein



and/or set forth as incomplete or outstanding items as provided for in Section 6.14 herein, and that the improvement may be utilized by the public.

(q) “Surcharge Fee” a three cent (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee starting April 1, 2024.

(r) “Surcharge Payment” the payment to Parks by the Licensee of all Surcharge Fees collected by the Licensee.

(s) “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.

### **3. TERM OF LICENSE**

**3.1** This License shall become effective upon Parks’ giving written Notice to Proceed to Licensee following registration with the Comptroller (“Commencement Date”). This License shall terminate fifteen (15) years from the Commencement Date (“Termination Date” or “Expiration Date”), subject to earlier termination pursuant to the terms of this License Agreement. The period between the Commencement Date and the Termination Date shall be referred to as the “Term”.

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

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

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any federal, State, or local law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, 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 as determined by Commissioner, 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) days' written 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 (60) days.

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

**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 Section 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 Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Premises.

**3.7** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises (unless such property is held by the Commissioner pursuant to Section 3.5) and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement (unless such property is held by the Commissioner pursuant to Section 3.5). Pursuant to Section 4.4 herein, City may use the Security Deposit to recover such damages in part or in whole.

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

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

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

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or re-permitted at an equal or higher fee (if at a lower fee, then only the net difference shall be owed by Licensee); and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or 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.

#### **4. PAYMENT TO CITY**

**4.1** Licensee shall make payments to the City for each Operating Year consisting of the Surcharge Payments **plus the greater of (a)** (i) six cents (\$.06) per gallon of gasoline and any alternative fuels delivered to the Licensed Premises except EV charging and solar (the "Gasoline Volume Fee" or "GVF") **or** (ii) the Gasoline and Alternative Fuels Guaranteed Minimum Annual Fee for such Year **plus (b) the greater of** (i) eight percent (8%) of the annual percentage of Gross Receipts (1) derived from Licensee's operation of the Licensed Premises, including EV charging and solar but excluding the sale of gasoline and any alternative fuels, in each Operating Year

("Non-Gasoline Products"), and (2) received by Licensee from any Parks approved Non-Gasoline Products Dunkin Donuts, EV, and solar sublicense or subcontract or (ii) the Guaranteed Minimum Annual Fee for Non-Gasoline Products”:

Operating Year	<u><b>SURCHARGE PAYMENT</b></u>	<u><b>PLUS</b></u>	<u><b>(a) Greater of Gasoline Volume Fee (GVF) OR Gasoline and Alternative Fuels Guaranteed Minimum Annual Fee</b></u>	<u><b>PLUS</b></u>	<u><b>(b) Greater of 8% of Gross Receipts of Non-Gasoline Products OR Guaranteed Minimum Annual Fee for Non-Gasoline Products</b></u>
1	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u><b>PLUS</b></u>	<u><b>Greater of GVF or \$2,200,539</b></u>	<u><b>PLUS</b></u>	<u><b>Greater of 8% of GR or \$199,461</b></u>
2	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u><b>PLUS</b></u>	<u><b>Greater of GVF or \$2,247,817</b></u>	<u><b>PLUS</b></u>	<u><b>Greater of 8% of GR or \$212,183</b></u>
3	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u><b>PLUS</b></u>	<u><b>Greater of GVF or \$2,297,015</b></u>	<u><b>PLUS</b></u>	<u><b>Greater of 8% of GR or \$224,485</b></u>
4	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold,	<u><b>PLUS</b></u>	<u><b>Greater of GVF or \$2,346,387</b></u>	<u><b>PLUS</b></u>	<u><b>Greater of 8% of GR or \$238,150</b></u>

	charged to the public, and collected by the Licensee				
5	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,396,503</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$252,648</u>
6	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,446,618</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$268,762</u>
7	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,498,920</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$284,344</u>
8	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,551,192</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$301,653</u>
9	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the	<u>PLUS</u>	<u>Greater of GVF or \$2,604,150</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$320,017</u>

	public, and collected by the Licensee				
10	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,656,843</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$340,428</u>
11	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,712,038</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$360,164</u>
12	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,766,919</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$382,089</u>
13	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,822,384</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$405,349</u>
14	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and	<u>PLUS</u>	<u>Greater of GVF or \$2,877,224</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$431,203</u>

	collected by the Licensee				
15	Three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee	<u>PLUS</u>	<u>Greater of GVF or \$2,934,935</u>	<u>PLUS</u>	<u>Greater of 8% of GR or \$456,203</u>

**4.2** (a) The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments to be provided by Parks upon its giving Notice to Proceed. Each monthly payment is due and payable on the date specified on the Schedule of Minimum Annual Fee Payments regardless of whether Licensee has received a bill for it from Parks. The Surcharge Fee is included in the approved rates set forth in **Exhibit C** and the Surcharge Payment shall be paid by the Licensee to City. The Surcharge Payment is separate from, and in addition to, the Guaranteed Minimum Annual Fee. The calculation of percentage fees payable to the City shall be based on gross revenue exclusive of the Surcharge Payment. Parks and Licensee agree and acknowledge that, the Surcharge Fee will be three cents (\$.03) per gallon of gasoline and any alternative fuel, except EV charging and solar, sold, charged to the public, and collected by the Licensee beginning April 1, 2024, and regardless of any price increases throughout the Term.

(b) On or before the thirtieth (30th) day following each month of each Operating Year, Licensee shall submit to Parks, in the form annexed hereto as **Exhibit B-1** or other form satisfactory to Parks, a report regarding Surcharge Payments of gallons sold at each roadside plaza, signed and verified by an officer of the Licensee.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of any License fees, or any other charges shall become overdue for ten (10) 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 Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of One Thousand Dollars (\$1,000), due on the first (1<sup>st</sup>) day of the month must be received no later than the tenth (10<sup>th</sup>) day of the month. If no payment is received, a two percent (2%) late charge in the amount of Twenty Dollars (\$20) will be assessed on the eleventh (11<sup>th</sup>) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly License fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure

by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or her right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon affixing its signature to this License, Licensee shall provide the City with a certified check, or any other negotiable instrument approved by Parks in the amount of eight hundred forty-seven thousand seven hundred eighty four dollars and fifty cents (\$847,784.50) payable to the "City of New York Department of Parks & Recreation" as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

**(b)** The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

**(c)** If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, including but not limited to the completion of the minimum capital improvement requirement as set forth in Section 6.1, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of License fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five (5) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

**4.5 (a)** On or before the thirtieth (30<sup>th</sup>) day following each month of each Operating Year, Licensee shall submit to Parks, in the form annexed hereto as **Exhibit B** or other form satisfactory to Parks, a statement of Gross Receipts, signed and verified to be true and correct by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. The statement shall include the following phrase: "I hereby certify above statement to be true and correct." The Licensee shall report total Gross Receipts generated from food service or other sublicensed operation or service. Each of the reports of Gross Receipts shall report the Gross Receipts generated at the Licensed Premises in the categories for which rates, fees or prices are specified on **Exhibit C**, the Schedule of Approved Hours and Rates, Fees and Prices, including, without limitation, the following categories:



Gasoline and Alternative Fuels	Gross Receipts from rates and charges made at the point of sale related to gasoline, diesel, and any alternative fuels at the Licensed Premises; and  Total Surcharge Payment (gallons sold per multiplied by \$.03 cent surcharge at each roadside plaza)
Motor Oil and Other Petroleum Products, EV Charging (except gasoline and alternative fuels)	Gross Receipts from rates and charges made at the point of sale related to EV charging, the sale of motor oil and other petroleum products at the Licensed Premises; and
Food and Beverages	Gross Receipts from rates and charges made at the point of sale related to the sale of food and beverages at the Licensed Premises; and
Farmstands	Net revenue received from sublicensee operating farmstand
Vending Machine Service	Net receipts from the operation of snack and beverage vending machines at the Licensed Premises;
Gift Cards	Gross Receipts from gift cards redeemable at the Licensed Premises.
Miscellaneous	All other sources of income realized from Licensee's operation of the Licensed Premises.

Simultaneously with its monthly report of Gross Receipts, Licensee shall also submit to Parks the

Surcharge Payment report in the in the form annexed hereto as **Exhibit B-1** or other form satisfactory to Parks,

(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, to the extent applicable, may be deducted from Gross Receipts or from the compensation due under this License. The Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts.

**4.6** On or before the sixtieth (60<sup>th</sup>) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement 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.

**4.7 (a)** Licensee, during the Term of this License, shall maintain, and shall cause any sub-licensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. 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. Upon request, Licensee shall provide to Parks any contracts, information, or documentation related to Licensee's Special Events. 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 or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall, if not cured after ten (10) days written notice, be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments, if applicable during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 2027's Gross Receipts are missing and the highest April Gross Receipts occurred in April 2024, then April 2027's "revised" Gross Receipts shall be calculated using April 2024's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

**4.8** In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sub-licensees, or subcontractors have breached any of the provisions contained in this Article, Licensee may be subject to a charge of Five Hundred Dollars (\$500) 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.

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

City of New York Department of Parks & Recreation  
Revenue Division  
The Arsenal - Room 407  
830 Fifth Avenue  
New York, NY 10065

## **5. RIGHT TO AUDIT**

**5.1 (a)** 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 for the purpose of examination, audit, review or any purpose they deem necessary. 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 fifty (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 (2) auditors conducting such examination or audit at said location.

(b) At Parks request, Licensee shall engage in the use of an auditor from the list of prequalified auditors ("PQL"), maintained by the Comptroller ("PQL") pursuant to Procurement Policy Board ("PPB") Rule § 3-10(k), at Licensee's sole cost and expense.

**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.

**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.

## **6. CAPITAL IMPROVEMENTS**

**6.1 (a)** Licensee shall expend or cause to be expended during the Term of this License a minimum of Seven Million Five Thousand Four Hundred Twenty-Seven Dollars (\$7,005,427) for Capital Improvements as defined in Section 2.1(b) herein. The architectural and design fees necessary to implement the Capital Improvements shall be included in the foregoing amount, but not the Design Review Fee referenced in Section 6.2 herein. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as **Exhibit D**. Licensee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld. All Additional Fixed Equipment and Personal Equipment applied toward the Capital Improvements required in this Article shall become the property of Parks upon installation, at Parks' option.

(b) Licensee must provide Americans with Disabilities Act ("ADA") accessibility as required by prevailing code throughout the Licensed Premises, including, but not limited to, providing ADA accessibility to the gas stations and food service structures, providing ADA compliant restroom(s), installing ADA accessible service counters and doors and egress throughout the Licensed Premises, installing ramps, as needed, and providing ADA signage. Licensee shall comply with all 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.

**6.2 (a)** Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of seventy thousand fifty-four dollars and twenty-seven cents (\$70,054.27) representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the “Design Review Fee”).

**(b)** To guarantee prompt payment of moneys due to a contractor or her or his subcontractors and to all persons furnishing labor and materials to the contractor or her or his subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding Two Hundred Fifty Thousand Dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 6.2(c); (i) Licensee guarantees payment in accordance with the provisions of **Exhibit H**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all person furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

**6.3** Licensee will be responsible for all costs associated with the renovation, operation, and maintenance of the Licensed Premises. The total cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit D** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, the Commissioner may request any information she reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon the Commissioner’s request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 6.1, including any amount needed above any estimated cost shown. If Licensee performs all Capital Improvements for less than the amount listed in Section 6.1, any excess monies shall be remitted to the City as additional License fees within thirty (30) days following the Commissioner’s determination of Final Completion. If Licensee fails to expend the amount listed in Section 6.1 herein by the date of expiration or sooner termination of this License, the City may also require any unexpended monies to be remitted to the City as additional License fees. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as Capital Improvements. Licensee shall pay for all improvements.

**6.4** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public

contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war or terrorism, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, future pandemics; epidemics, other states of emergency declared by the City, state, or federal government, fire or other casualty (“Force Majeure Event”). In such situations, the Licensee shall propose for the Commissioner’s approval (which shall not be unreasonably withheld) a revised completion schedule and if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule. In the event Licensee fails to finally complete a particular improvement by the date specified for completion in **Exhibit D**, Licensee may be required to pay the City liquidated damages of One Hundred Dollars (\$100) per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, State, or Federal permitting authority and provided further that Parks has given Licensee a notice to cure such failure to complete and Licensee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, state, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. Licensee’s failure to comply with the schedule for Capital Improvements for a period of thirty (30) days following written notice shall constitute a default upon which Commissioner may terminate this License Agreement by giving thirty (30) days’ written notice. In the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, Parks and Licensee shall attempt in good faith to negotiate a mutually acceptable solution, provided that in no event shall Licensee expend (including its permitted sublicensees) or cause to be expended less than seven million five thousand four hundred twenty-seven dollars (\$7,005,427) for Capital Improvements.

**6.5** Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings (“DOB”), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer, who will oversee the entire construction project. Licensee shall submit the architect’s or engineer’s qualifications to Parks for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. Licensee is required to provide Parks with all plans and specifications upon completion of the construction documents. All necessary permits and approvals for capital work must be obtained from DOB and all other agencies with jurisdiction, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and/or letters of no objection, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Complete until the Commissioner certifies in writing that the Capital Improvement has been completed to the Commissioner’s satisfaction.

The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

**6.6** At Parks' request, Licensee shall provide Parks with one (1) complete set of final, approved "AS-DESIGNED" plans in a format acceptable to Parks. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4-millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e., Xerographic), laser, copy press (i.e., OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED" drawings submitted must be so labeled. Each drawing shall contain the name, address and telephone number of the architect/engineer and the contractor. Each drawing shall also include the Parks property number, block and lot numbers for the Parks facility in which the work was performed, and, if applicable, the DOB approval/application number.

**6.7** For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the DOB, insofar as it has jurisdiction over Capital Improvements. Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy or letter of no objection as required, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, Fire Department certificates and all other permits and approvals including, but not limited to, New York City Department of Small Business Services ("SBS"), New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation, New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits necessary for any alterations to the existing premises. Licensee shall notify Commissioner of the specific date on which construction shall begin.

**6.8** Licensee shall perform all Capital Improvements in accordance with all federal, State and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new or like-new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in Licensee's name, all manufacturer's warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the Licensee's Capital Improvements when and if, as set forth in this License Agreement, the City exercises its option to take title to such equipment and materials, as may be requested by the City from time to time. Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guarantees and warranties or exercise other rights or remedies. All of the City's rights and title and interest in and to said manufacturers' warranties and guarantees may be assigned by the City to any subsequent licensee(s) of the Licensed Premises.

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

**6.10** Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless the Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

**6.11** No temporary storage or other ancillary structures and staging areas may be erected and maintained without Parks’ prior written approval.

**6.12** Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from Parks. Any attachments to the trees, such as lights, will not be permitted. Licensee shall report dead and diseased trees to Parks and upon Parks’ request, will remove them.

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

**6.14** Licensee shall provide written notice to the Commissioner when it believes that the Capital Improvements are Substantially Completed. After receiving such notice, the Commissioner shall inspect such Capital Improvements. After such inspection, the Commissioner and Licensee shall jointly develop a single final list of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all items on that list within a reasonable time as determined by the Commissioner.

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

**6.16** Licensee shall provide Parks with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. Licensee shall



use its best efforts to discharge such liens within thirty (30) business days of receipt of lien by Licensee.

**6.17** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects (reasonable wear and tear, settling, or natural degradation excepted), during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 6.17 shall constitute a default and may result in the termination of this License.

**6.18** Neither Parks, nor the City, nor the agencies, officers, agents, employees, or assigns thereof, shall be bound, precluded, or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent, or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval, order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 6.18 signed by the Commissioner or Commissioner's authorized representative.

**6.19** Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

**6.20** Prior to the commencement of any construction, Licensee shall have an asbestos inspection performed on the existing structures at the Licensed Premises to the extent required by DOB or other applicable authority. In the event that asbestos removal is deemed necessary, Licensee will remove the asbestos, at its sole cost and expense, according to City, State, and federal regulations.

## **7. ALTERATIONS**

**7.1 (a)** Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Article. 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) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(ii) Ensure that work performed and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (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 (10) days after the occurrence of said completion or final payment.

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

## **8. FIXED AND EXPENDABLE/PERSONAL 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** Subject to the terms of this License Agreement, the City has title to all Fixed Equipment on the Licensed Premises as of the date of Notice to Proceed. 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 the City chooses not to exercise such option, Licensee shall at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment, other than Fixed Equipment, and restore the Licensed Premises in a condition as good or better than at the Commencement of this License Agreement.

**8.3** Licensee shall supply at its own cost and expense all Personal 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 Personal Equipment which 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 Personal Equipment obtained by Licensee (other than that applied toward Capital Improvements) shall remain in Licensee and such equipment, such as fuel tanks, 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, the 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. 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 excluding reasonable wear and tear.

**8.8** Licensee will use reasonable efforts to install Energy Star or other similarly efficient appliances and equipment at the Licensed Premises

## **9. UTILITIES**

**9.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with the appropriate service providers. Licensee will be required to pay for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that DEP assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City.

## **10. OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, shall renovate, 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. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks’ prior written approval. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior written approval.

**(b)** 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 C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. All fees and prices approved by Parks include the Surcharge Fee which shall be remitted to Parks for each gallon sold. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee’s approved operating hours and/or schedule. If the request is granted by the

Commissioner, the Licensee will continue to be responsible for all other obligations under this License Agreement, including the payment of all License fees. The Surcharge Fee will apply in all instances.

(c) Licensee shall comply with all national safety guidelines and federal, State, and City laws, rules and regulations related to the renovation, operation, and maintenance of the Licensed Premises at its sole cost and expense.

(d) Licensee shall provide affordable services, and shall renovate, operate, and maintain the Licensed Premises at a high standard of quality.

**10.2 (a) Gasoline Services.** Licensee shall keep open and operate all six (6) gasoline services at the Licensed Premises twenty-four (24) hours per day, seven (7) days per week. Licensee shall provide at least two grades of automotive gasoline such as Regular (87 Octane Gasoline), Plus (89 Octane Gasoline), and Premium (93 Octane Gasoline), at least one (1) regular motor oil, and automotive supplies, of the standard quality and price that prevail at other gasoline service stations located in the neighboring area of the Licensed Premises. Licensee will, upon approval of Parks, provide diesel and alternative fuels such as bio diesel of the standard quality and price that prevail at other gasoline service stations located in the neighboring area of the Licensed Premises. Prices must be posted on each fuel pump and shall be kept up to date at all times by means of changing the price markers. The Licensee shall provide both radiator water and compressed air to the motoring public without charge. The Licensee will provide a full range of lubricants and other automotive products, including antifreeze, coolants, window solvents, STP's octane boosters, oil treatments, power steering and brake fluids. Gasoline service stations must accept cash, credit cards, debit cards, and electronic payments, including Apple Pay. Licensee must accept all major credit cards, including American Express, Discover/PayPal (if linked to Apple Pay), Diner's Club, MasterCard/MasterCard Fleet, VISA/VISA Fleet, Wright Express (WEX), and Voyager. Licensee must also provide customers with a contactless payment option so they can simply tap and pay (outside) at the pump.

(b) **Public Restrooms.** Licensee shall keep open and operate all restrooms at the Licensed Premises twenty-four (24) hours per day, seven (7) days per week.

(c) **Food Service Facility.** The Licensee shall develop, operate and maintain a food service facility at each roadside plaza at a high standard of quality. The food service facility should make a significant improvement to the surrounding area while providing a convenient service to the public. The exact size and location of each food service facility is subject to Parks' prior written approval. All prices and menu items are subject to Parks' prior written approval. Licensee will be required to maintain adequate inventory to assure a constant supply of food and beverages. Any staff assigned by the 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 New York City Department of Health and Mental Hygiene ("DOHMH") permits. The Licensee may only operate a food service facility if the Licensee and its food service employees have obtained the appropriate, valid permits and authorizations required by DOHMH. In addition to a Parks' license, at all times that a food service facility is operating, a staff person with a valid DOHMH food handler's license must be present. Licensee operating without all necessary permits may be subject to fines and/or confiscation of merchandise. The food service facility at each roadside plaza must also operate seven (7) days a week, but the Licensee may at the Licensee's discretion, operate each food service facility for less than twenty-four (24) hours per day.

(d) **Merchandise.** The Licensee may sell merchandise at the Licensed Premises. All

merchandise, supplies, and equipment to be sold at the Licensed Premises and the proposed prices of those items are subject to Parks' prior written approval. With respect to the sale of merchandise at the Licensed Premises, Licensee recognizes 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 must purchase that merchandise from authorized licensees of the City. 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 and forfeiture of the Security Deposit.

(e) **Vending Machines.** Subject to Parks' prior written approval, Licensee may provide snack and beverage service through vending machines at the Licensed Premises. A maximum of three (3) vending machines may be placed at each of the six roadside plazas; a total of eighteen throughout the Licensed Premises. Furthermore, at the Commissioner's reasonable direction, Licensee shall remove any vending machine. 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, attached hereto as **Exhibit E**, which apply to all beverage vending machines located on City property, for the entire Term. Food standards for vending machines may be implemented by the City during the Term of the License. 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.

(f) **Automotive Repair Services.** The Licensee shall be prohibited from engaging in any automobile repairs; provided that upon prior written approval from Parks, the Licensee may i) change and/or repair tires, ii) provide crankcase service, or (iii) provide other similar services. Subject to Parks' prior written approval, the Licensee may set hours of operation for approved automotive repair services for less than twenty-four (24) hours per day, seven (7) days per week.

(g) **Farmstands.** Subject to Parks' prior written approval, Licensee may operate seasonal farmstands at select locations at the Licensed Premises. "Farmstands" as used herein shall refer to individuals who have contracted with the Licensee for the use of areas of the Licensed Premises to sell good such as fresh fruits and vegetables, meats, fish, eggs, ciders, and fruit juices, honey, jams and preserves, cheese, baked goods, plants and flowers, maple syrup, grains, or any other similar products. All farmstand site locations, number of farmstands, days and hours of operation of farmstands, prices and items sold at farmstands must be approved in advance by Parks.

(h) **Electric Vehicle Charging.** Subject to Parks' prior written approval, the Licensee will offer electric vehicle charging at the Licensed Premises. All charging hardware shall be provided, installed, operated, maintained, and serviced by Licensee. The location, type, and number of electric vehicle chargers at the Licensed Premises shall be subject to Parks' prior written approval. Licensee shall ensure that all electric vehicle charging hardware and connections to electrical transmission systems conform with federal, State, and local laws and regulations, that all electric vehicle charging conforms with all industry and major charging standards, and that electric vehicle charging complies with all ADA requirements and local codes.

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

**(b)** Smoking of any tobacco product, non-tobacco smoking products, or the use of electronic cigarettes is strictly prohibited at the Licensed Premises.

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

**(d)** Licensee shall not sell any beverages in single-use plastic bottles or glass bottles. All beverages will be required to be in non-glass, shatter-proof containers. Single-use plastic beverage bottles are defined as a drink, such as water, in a sealed rigid plastic bottle having a capacity of 21 fluid ounces or less. Plastic bottle alternatives, such as aluminum or boxed beverages, are permitted.

**(e)** 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, permits, or approvals. In the event that, at the Commencement Date or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the Commencement Date. 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 Article shall limit Licensee's obligation to pay the fees due under this License Agreement. Licensee is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.

**10.5** 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 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 sub-licensee whenever requested by Commissioner.

**10.6** 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.

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

- (i) collecting and safeguarding all monies generated under this License;
- (ii) maintaining the Licensed Premises;
- (iii) conducting and supervising all activities to be engaged in upon the Licensed Premises ; and
- (iv) securing the Licensed Premises.

**10.8** Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises year-round and shall provide a twenty-four (24) hour-a-day security system at the Licensed Premises. Licensee shall secure the Licensed Premises and any equipment every evening.

**10.9** 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 acceptable to the Commissioner. In addition, Licensee must immediately notify Parks of major accidents or unusual incidents, including but not limited to injury, death, fire, flood, casualty, property damage, or theft occurring at the Licensed Premises. Licensee shall promptly notify Parks, in writing, within twenty-four (24) hours of receipt 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. 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.

**10.10** Licensee shall maintain close liaison with the Parks Enforcement Patrol (PEP) 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 best efforts to prevent illegal activity on the Licensed Premises.

**10.11 (a)** Under no circumstances shall Licensee be permitted to place advertisements on the exterior of the Licensed Premises without Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. 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, which approval shall not be unreasonably withheld, or delayed. 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 may establish an advertising and promotion program, subject to Parks' prior written approval.

**(b)** Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising which contains tobacco, non-tobacco smoking product, electronic cigarette, or alcoholic beverage 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. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks, at Licensee's sole cost and expense. Licensee may release news items to the media as it sees fit. If the Commissioner in the Commissioner's 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 approval as to design and distribution of all advertising and promotional materials.

**(c)** All advertising by third parties holding events at the Licensed Premises must be approved in advance in writing by Parks. Any failure to submit such advertising to Parks for pre-approval at least fourteen (14) days in advance of such event may result in the immediate termination of this License Agreement.

**10.12** Any and all signage is subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed. 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. Signage shall also comply with ADA standards.

**10.13** 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. The placement, design and content of all directional signage is subject to Parks' prior written approval. 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 the Commissioner's prior written approval.

**10.14** 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.

**10.15** Should the 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 reasonably 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 timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, notwithstanding any other provisions herein, then Commissioner may terminate this License.



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

**10.17** This License may be suspended in full or in part for any reason, including in the event of a Force Majeure Event (as defined in Section 6.4) with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

**10.18** Except for properly stored gasoline, 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.

**10.19** Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

**10.20** 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. Based on their inspections, should the Licensee fail to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify the Licensee, in writing, and the Licensee shall be required to correct such shortcomings within the time frame set forth in such notice. If the 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, require the Licensee to pay to Parks as liquidated damages Five Hundred Dollars (\$500.00) per day from the date of the notice, with respect to each violation of the License, until the shortcomings have been corrected. Liquidated damages, if not paid promptly, may be deducted from the Licensee's Security Deposit.

If an assessment is received for a violations, there is a process by which the assessment may be appealed if the 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 ten (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.

**10.21** Licensee recognizes that this License Agreement does not grant the Licensee exclusive rights to sell within parks 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 parks in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks, or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages Licensee to report illegal vendors by calling 311.

**10.22** Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the Licensed Premises. The Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks, the consent for which shall not be unreasonably withheld or delayed. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval. Licensee shall store all outdoor equipment on a nightly basis and anytime its operations at the Licensed Premises are closed.

**10.23** Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the Licensed Premises. Parks reserves the right to require that all staff wear clothing consistent with Licensee's dress code that has been approved in writing by Parks. A copy of Licensee's staffing plan shall be provided by Licensee to Parks upon receipt of written Notice to Proceed.

**10.24** Licensee shall comply with all laws, rules, and regulations of appropriate agencies, including 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), Broadcasting Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to Commissioner. Any musical programming or other types of entertainment or amplified sound are subject to Parks' prior written approval.

**10.25** Licensee shall provide reasonable means for measuring the satisfaction of its customers. Evaluation of customer satisfaction mechanism, includes, but not limited to, providing feedback cards to guest in check presenters; feedback forms online/website; e-mail and online surveys; mystery shoppers; social media; and direct guest feedback.

**10.26** Licensee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as a licensee of the City of New York as set forth in the NYC Earned Safe And Sick Time Act Contract Rider annexed hereto as **Exhibit F**.

**10.27** If applicable, Licensee agrees to work in good faith to cooperate with Parks' efforts to advance Parks-approved volunteering events and programming at or near the Licensed Premises. Parks' Revenue Division will coordinate these activities with the Licensee.

**10.28** Licensee shall be responsible for providing safe lighting throughout the Licensed Premises.

**10.29** Licensee further warrants that all merchandise and services of any kind provided pursuant to this License shall be of a high standard of quality.

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

**11.1 (a)** Licensee shall, at its sole cost and expense (or through arrangements with third parties), renovate, operate, and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, restrooms, building systems, utility systems and connections, sewer systems and connections, equipment, landscaping, lighting, sidewalks, parkway entrance and exit lanes, paved areas, parking spaces, vaults, gutters, curbs, and fixtures. In addition, Licensee must keep all signs and structures on the Licensed Premises 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.

**(b)** Licensee shall make all necessary repairs at the Licensed Premises at its sole cost and expense. This includes but is not limited to making the repairs necessary to protect the safety of all visitors to the Licensed Premises, including the clean-up and removal of all debris and abandoned equipment from the Licensed Premises.

**11.2 (a)** Licensee shall operate, maintain, repair, and clean all the interior and exterior areas of the Licensed Premises.

(b) Licensee shall also operate, maintain, repair and clean the public restrooms on a daily basis at the Licensed Premises in a manner approved by Parks. Restroom cleaning includes, but is not limited to, wiping down restroom surfaces, cleaning soap dispensers, paper towel dispensers, mirrors, and hand dryers, mopping floors, and ensuring that the air freshener works properly. In addition, Licensee shall regularly change the restroom garbage, stock all necessary supplies, including but not limited to toilet paper, hand towels, and soap, and to make any necessary repairs to all public restrooms.

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

**11.4 (a)** Licensee shall conduct routine maintenance and repair of the Licensed Premises, including maintenance, inspection, and repair of all fuel stations and pumps, water levels, filters for dispensers, tending to sumps, HAC systems, pressure gauges on fuel pumps. The Licensee shall maintain maintenance, inspection, and repair checklists, records, photographs, and other maintenance reports, and provide such records to Parks upon its request.

(b) At Parks' request, 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. The Licensee shall make all necessary repairs during the License Term.

**11.5** Licensee shall maintain and improve the landscaping at the Licensed Premises year-round, including, but not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. Licensee shall prune any trees on the Licensed Premises as needed. Licensee must submit detailed plans to Parks of all horticultural and landscaping work to be performed. All landscaping and horticultural work to be performed at the Licensed Premises is subject to Parks' prior written approval. 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.

**11.6 (a)** Pursuant to a plan approved by Parks, Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish, and litter from the Licensed Premises and clean-up and removal of all waste, garbage, refuse, rubbish and litter generated by Licensee's operations within fifty (50) feet of the Licensed Premises. Licensee shall manage a comprehensive waste separation and management system and provide adequate and easily accessible waste, compost, and recycling receptacles, approved by Parks, and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval. Licensee shall comply with all City, State, and federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition throughout the License Term.

**11.7** 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 well-maintained state and in good repair, ordinary wear and tear excepted.

**11.8** 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 as soon as possible after the appearance of any such graffiti and shall continue until such graffiti is removed.

**11.9** 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 and comply with any additional Parks regulations on pesticides use.

**11.10** The Licensee shall, at its sole cost and expense, conduct hydrostatic testing of gasoline storage tanks, and to repair or replace such gasoline storage tanks when deemed necessary by the Licensee, Parks or any federal, State, or local agency having appropriate jurisdiction. 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 Randall’s Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five (5) years and shall comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. The Licensee must comply with all applicable City, State, and federal laws rules and regulations relating to the proper use, maintenance, and disposal of oil storage tanks, including but not limit to Article 17, Title 10 of the Environmental Conservation Law. Any changes, removals or additions of tanks must be pre-approved by Parks.

**11.11** Licensee shall make reasonable efforts to:

- (a) use chlorine free, biodegradable and/or compostable products, such as paper towels and napkins, utensils, cups, and plates and “Green Seal” eco-friendly products such as soaps, cleaners, light bulbs, and paint;
- (b) use energy-efficient LED lighting and water-conserving devices (e.g. low flow faucets, high-efficiency toilets) at the Licensed Premises; and
- (c) training staff on environmentally friendly food service practices.

## **12. 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.

**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 the Commissioner or the Commissioner's duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or Commissioner's duly authorized representative.

## **13. RESERVATION FOR SPECIAL EVENTS**

**13.1 (a)** For the purposes of this Section, the term "Parks' Special Event(s)" shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks' Special Events and unanticipated events and emergencies at the Licensed Premises. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Section shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

**(b)** Parks, acting on behalf of the City, reserves the right to host a number of 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 (1) month in advance. During any such Parks Special Event, Licensee shall be obligated to operate the entire Licensed Premises without cost to Parks, however the City will pay for Licensee's costs for food and beverage items or such other operational costs connected with Parks Special Events. Such costs for Parks Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

**13.2** Subject to prior written approval from Parks, Licensee may conduct Licensee's Special Events serving a Parks appropriate purpose (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Any ticketed events at the Licensed Premises (including, but not limited to, payment of a fee at the door) also require prior written approval from Parks. Licensee shall submit to Parks for approval, at least thirty (30) days in advance, all plans for any Licensee's Special Events at the Licensed Premises. In no event shall the entire Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved by Parks in advance in writing 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. Licensee must 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. All revenue generated through such special events must be reported to Parks as Gross Receipts. Notwithstanding anything to the contrary in this Section, Parks reserves the right to review Licensee's use of the Licensed Premises for Licensee's Special Events and require that Licensee obtain Parks' prior written approval for all Licensee's Special Events, of any type, if, in the reasonable determination of the Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public, provided said approval shall not be unreasonably withheld, conditioned, or delayed.

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

**14.1** 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 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. The Commissioner may request any additional information the Commissioner deems 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 ten percent (10%) or more in the 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 Article.

**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 ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of the Commissioner. Licensee shall present to the 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 sub-licensee 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. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

**14.3** No consent to or approval of any assignment or sublicensee granted pursuant to this Article 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.

**14.4** In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Article 19 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

**14.5** Licensee and proposed assignee/transferee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

## **15. PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by the 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 (1) week 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 intentional tortious acts or omissions Licensee.



## **16. 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.

## **17. 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. Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining thereto as applicable. Any violation of this Article shall be a material breach of this License.

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

## **18. NO WAIVER OF RIGHTS**

**18.0** No acceptance by the 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 the 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.

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

### **19.1 Licensee Responsibility**

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

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

(c) The Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under

this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person.

(d) The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used, generated, treated or disposed of on the 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 Indemnification and Related Obligations**

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

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

## **20. INSURANCE**

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

(a) From the date this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of Commissioner, Licensee’s operations warrant it.

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

## **20.2 Commercial General Liability Insurance**

(a) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

(b) Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37. “Blanket” or other forms are also acceptable if they provide the City, together with its respective officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

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

## **20.4 Commercial Automobile Liability Insurance**

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

## **20.5 Property Insurance**

(a) The Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment, and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-

related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

(b) This Section 20.5 does not require coverage for damage caused by flooding.

(c) The limit of such property insurance shall be no less than the full Replacement Cost of all 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.

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

## **20.6 Flood Insurance**

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

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

## **20.7 Liquor Law Liability Insurance**

In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name the City, together with its officials and employees, as Additional Insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

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

(b) If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000) and provide coverage for the Licensee as Named Insured or Additional Insured and the City, together with its officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

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

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

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

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

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

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

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

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

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

## **20.10 Proof of Insurance**

(a) Certificates of Insurance for all insurance required in this Article must be submitted to and accepted by the Commissioner prior to or upon execution of this License.

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

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

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

(e) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Article is secured and maintained, nor does it waive Licensee's liability

for its failure to do so.

(f) The Licensee shall 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.

## **20.11 Miscellaneous**

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

(b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include the City, including its officials and employees, as Additional Insureds with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as Additional Insureds (with coverage for Commercial General Liability Insurance at least as broad as ISO form CG 20 26).

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

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

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

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License nor shall it preclude the City from exercising

any rights or taking such other actions as are available to it under any other provisions of this License or the law.

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

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

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

## **21. 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, Commissioner's 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.

## **22. 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 her or his 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 her or his privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

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

**(B)** If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 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 (5) years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

**(ii)** The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value 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 her or his 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 her or his sole discretion terminate this License Agreement

upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

### **23. 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, by service to Licensee through the New York State Secretary of State, 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.

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

(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 assistance which Parks and/or the City of New York may reasonably require of Licensee.

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

**25.1** The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any 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.

## **26. EMPLOYEES**

**26.1** All experts, independent contractors, consultants, specialists, trainees, employee, servant, and agent, 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, trainees, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

## **27. INDEPENDENT STATUS OF LICENSEE**

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

## **28. CREDITOR-DEBTOR PROCEEDINGS**

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

## **29. CONFLICT OF INTEREST**

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

## **30. PROCUREMENT OF AGREEMENT**

**30.1** Licensee represents and warrants that no person or selling agency has been employed or retained by Licensee to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Except for the Temporary Use Authorization and this License Agreement, 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.

**30.2** 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.

## **31. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

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

**32.1** Each and every provision of Federal, New York State, or New York City law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

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

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

### **34. JUDICIAL INTERPRETATION**

**34.1** Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of 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.

### **35. MODIFICATION OF AGREEMENT**

**35.1** 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.

### **36. NOTICES**

**36.1** 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 electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement. Licensee is required to update its mailing and electronic mail addresses with Parks.

### **37. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**37.1** Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that Licensee is a limited liability company 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.

### **38. HEADINGS AND TABLE OF CONTENTS**

**38.1** The headings of sections, articles 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, feminine, masculine and neuter pronouns shall include the others as the context may require.

### **39. ENTIRE AGREEMENT**

**39.1** This License Agreement constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Commissioner and Licensee.

### **40. COUNTERPARTS**

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

*(Remainder of Page Intentionally Left Blank)*

**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

**AMG Retail I LLC**

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

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

Alexander Han  
Chief of Concessions

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

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

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

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

DRAFT



STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this \_\_ day of \_\_\_\_\_, 2024 before me personally came Alexander Han to me known, and known to be the Chief of Concessions of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that he executed the same in her/his official capacity and for the purpose mentioned therein.

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

STATE OF NEW YORK

ss:

COUNTY OF

On this \_\_ day of \_\_\_\_\_, 2024 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of **AMG Retail I LLC** and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

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

**EXHIBIT A**

**LICENSED PREMISES**

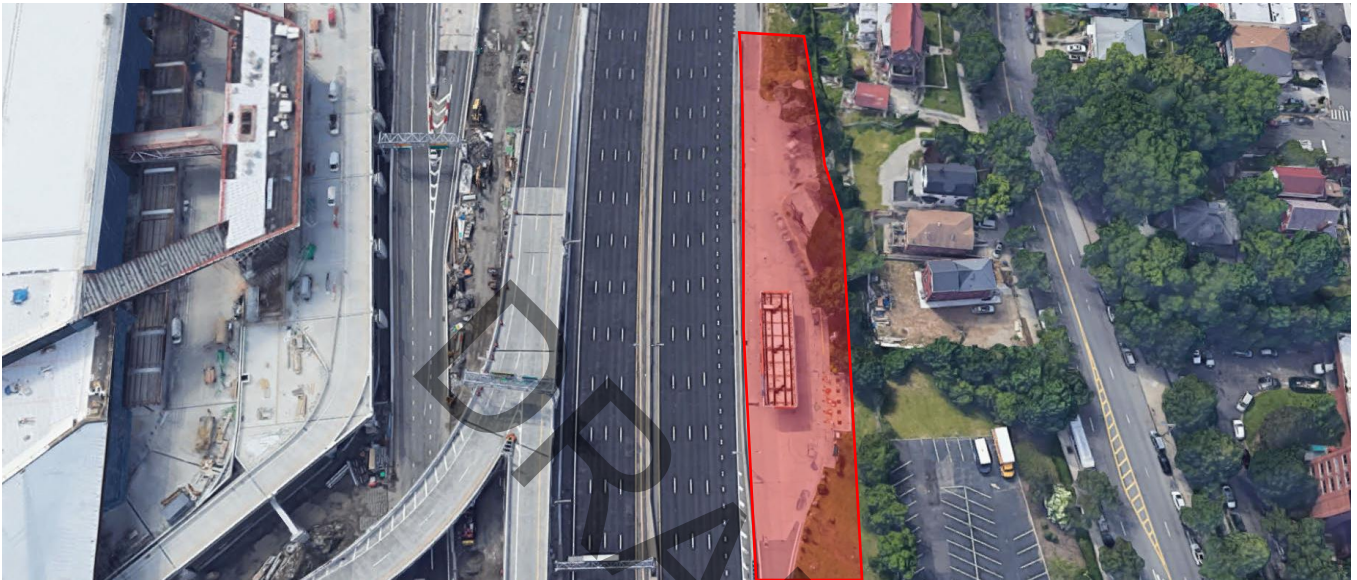
1. Shore Parkway - B166D-GS (center mall) near exit 11s, Flatbush Avenue, Brooklyn



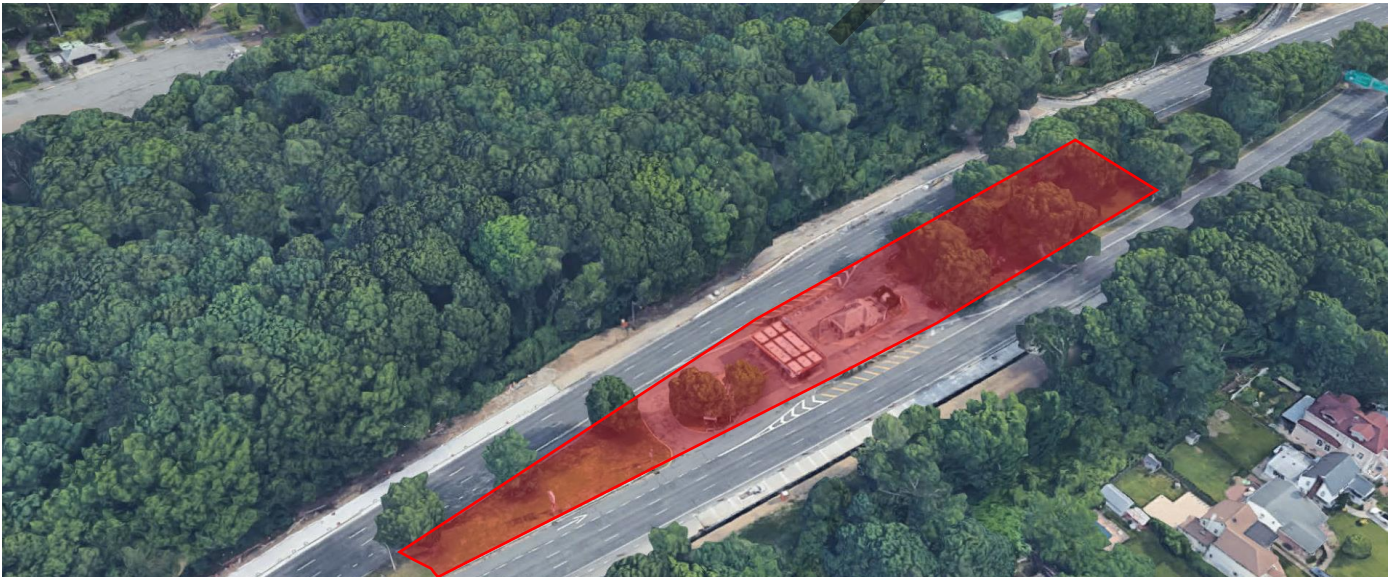
2. Grand Central Parkway (westbound) - Q84-GS - at 106th Street and near LaGuardia Airport, Queens.



3. Grand Central Parkway (eastbound) Q84-A-GS - at 104<sup>th</sup> Street and near LaGuardia Airport, Queens.



4. Grand Central Parkway - Q21-B-GS - (center mall) at Cunningham Park, near the 188<sup>th</sup> Street exit, Queens



5. Major Deegan Expressway (northbound) - X150-A-GS - near the East 233<sup>rd</sup> Street exit, Van Cortlandt Park, the Bronx.



6. Major Deegan Expressway (southbound) - X150-GS - near the East 233<sup>rd</sup> Street exit, Van Cortlandt Park, the Bronx.

**EXHIBIT B**

**MONTHLY REPORT OF GROSS RECEIPTS**

To be provided by Parks in the written Notice to Proceed

DRAFT

**EXHIBIT B-1**

**SURCHARGE PAYMENT REPORT**

			<b>Surcharge</b>
<b>Permit #</b>	<b>Location</b>	<b>Gallons Sold</b>	<b>\$.03 / gallon sold</b>
<b>B166-D-GS</b>	<b>Shore Parkway</b>		
<b>Q21-B-GS</b>	<b>Cunningham</b>		
<b>Q84-A-GS</b>	<b>Grand Central East</b>		
<b>Q84-GS</b>	<b>Grand Central West</b>		
<b>X150-A-GS</b>	<b>Major Deegan North</b>		
<b>X150-GS</b>	<b>Major Deegan South</b>		

<b>Totals:</b>		
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**EXHIBIT C**

**SCHEDULE OF APPROVED HOURS AND RATES**

**HOURS OF OPERATION**

Gas Station Services and Public Restrooms: twenty-four (24) hours per day, seven (7) days per week

Food Service Facilities: twenty-four (24) hours per day, seven (7) days per week

DRAFT

**EXHIBIT D**  
**SCHEDULE OF CAPITAL IMPROVEMENTS**

The total cost of Capital Improvements shall be a minimum of \$7,005,427.00 and all work shall be completed in phases as follows below. All Capital Improvements included below shall be completed at all six roadside plaza locations. Capital Improvements shall also include testing for and remediation of hazardous materials, including asbestos removal, as required at the Licensed Premises. Further, Licensee shall expend an additional \$3,600,000 over the minimum Capital Improvement amount listed above for replacement of the fuel tanks at all six roadside plaza locations, if so required.

Phase 1 (Due Year 1) - \$1,198,000

- Canopy Repairs at Fuel Pumps
- Rebranding
- Replace all Fuel Dispensers
- Exterior Lighting
  - LED, low energy light fixtures to be installed throughout site.
- Site Recycle Program
- New Signage
  - Update signage throughout all sites.
- Way-Finding Signs
- Bike Station Repair

Phase 2 (Due Year 2)- \$2,921,427

- Pavers & Parking Area
  - Permeable pavers to be installed.
  - Repaving of entry ramps and parking areas.
- HVAC
- Site Design & Approval
- Building Design & Approval
- New ADA Restroom
- Roof Repair
- EV Charging Infrastructure and Solar Installation

Phase 3 (Due Year 3)-\$588,000

- Exterior ADA Compliance
  - Widening/replace sidewalks.
  - Install new complaint ramps.
  - Add new ADA compliant signage.
  - Add new lighting to conform to ADA requirements.
  - Repaint Parking and pedestrian walkways.
- Landscape Garden
- Building Repairs
- Exterior Envelope



- Outdoor Fitness

Phase 4 (Due Year 7) \$450,000

- Fuel Dispenser Replacement

Phase 4 (Due Year 10) \$1,848,000

- Dunkin Nex-Gen
- HVAC Replacement
- Redo Landscaping
- New ADA Restroom Replacement

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**EXHIBIT E**  
**DOHMH Vending Machine Guidelines**

New York City  
Food Standards

# BEVERAGE VENDING MACHINES

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

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

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

*Follow these Standards to provide healthier beverage options.*

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

City agencies follow these standards per Executive Order 122.

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

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



# BEVERAGE VENDING MACHINES



Example of a beverage vending machine that meets the standards.

## Standards for programs serving children age 18 and under

- 1** Require all beverages contain 25 calories or less per 8 ounces. For programs serving children age 12 and under, require that all beverages contain 10 calories or less per 8 ounces.

Unsweetened 1% and nonfat milk not included.

- 2** Beverages cannot contain artificial sweeteners, other natural non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol), artificial flavors or artificial colors.

- 3** For programs serving children age 12 and under, beverages cannot contain caffeine.

- 4** Prohibit advertisements of high calorie beverages on vending machines.

Promotional material on the front and side panels of the machine can advertise water or beverages with 25 calories or less per 8 ounces.

- 5** Require calorie information is posted for each beverage, as packaged.

Required for City agencies only.

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

- 1** Recommend all beverages contain 25 calories or less per 8 ounces.

Condiments are not restricted (e.g. milk, sugar, sugar substitutes).

- 2** Recommend all beverages and condiments contain 0 grams trans fat.

- 3** Recommend calorie information is posted for each beverage, as packaged.

## Snack Standards

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

**Calories:** no more than 200 calories

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

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

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

- Nuts, seeds, nut butters and cheese are exempt

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 200 mg

- Cottage cheese: no more than 400 mg

**Sugar:** no more than 10 grams

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

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

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

Required for City agencies only.

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

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

*Follow these Standards to provide healthier food options.*

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

City agencies follow these standards per Executive Order 122.

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

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

## EXHIBIT F

### NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

#### 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. Concessionaires 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 Concessionaire 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 Concessionaire 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 Concessionaire must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto:ComplianceMonitoring@dcwp.nyc.gov)) the Concession Manager 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 Concessionaire 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, Concessionaire will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Concessionaire 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 Concessionaire. The Concessionaire is advised to review the ESSTA and the DCWP Rules in their entirety. The Concessionaire may go to [www.nyc.gov/PaidSickLeave](http://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 Concessionaire can get more information about how to comply with the ESSTA and the DCWP Rules. The Concessionaire 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.<sup>11</sup> 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

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<sup>11</sup> 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.

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;

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.

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**EXHIBIT G**

**CERTIFICATES OF INSURANCE**

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

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

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

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

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

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

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

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

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

State of .....)

) ss.:

County of .....)

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

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

**EXHIBIT H**

**PAYMENT BOND/PAYMENT GUARANTEE**

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

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

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

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

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

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

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

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

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

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

such person, firm or corporation.

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

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

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

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

(G) The Licensee shall make payment as described in Section IV only if, after considering all defenses presented to the claim for payment, it determines that the payment is due and owing to the beneficiary making the demand.

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

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

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

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

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

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

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