


PUBLIC MEETING

FRANCHISE AND CONCESSION REVIEW COMMITTEE

WEDNESDAY NOVEMBER 13th, 2024 @ 2:30 P.M.

Location:
22 Reade Street
Spector Hall
New York, NY 10007

NOTE: For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public meeting should contact MOCS at least five (5) business days in advance of the meeting to ensure availability. 

*Franchise and Concession Review Committee Public Meeting
Wednesday November 13th, 2024 @ 2:30 P.M.*

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 1: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to negotiate a non-exclusive sole source license agreement with Gennaro Jewelers Inc for the non-exclusive use of City-owned trademarks on merchandise.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 2: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to negotiate a non-exclusive sole source license agreement with Greenlight, LLC for the non-exclusive use of City-owned trademarks on merchandise.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 3: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to negotiate a non-exclusive sole

source license agreement with City Merchandise Inc. for the non-exclusive use of City-owned trademarks on merchandise.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

No. 4: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to allow New York City Tourism + Conventions, on behalf of the New York City Department of Small Business Services, to negotiate a non-exclusive sole source license agreement with Torkia International Inc. for the non-exclusive use of City-owned trademarks on merchandise.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 5: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement with Council on the Environment, d/b/a GrowNYC to operate and manage Greenmarket Farmers' Markets at various parks Citywide. The Term of the Concession shall commence upon the date in the written Notice to Proceed and shall terminate no later than October 31, 2034.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 6: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval, pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Zurab Tskhakaia for the operation of Tennis Professional Concessions at Dyker Beach Park, Brooklyn. The agreement will provide for one 4-year term.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 7: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval, pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Eric Jordan for the operation of Tennis Professional Concessions at William E. Kelly Memorial Park, Brooklyn. The agreement will provide for one 5-year term.

NEW YORK CITY DEPARTMENT OF PARKS AND RECREATION

No. 8: **IN THE MATTER** of the intent to seek Franchise and Concession Review Committee approval, pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Zurab Tskhakaia for the operation of Tennis Professional Concessions at Kaiser Park, Brooklyn. The agreement will provide for one 5-year term.

MEMORANDUM

To All NYC Borough Presidents
All NYC Community Board Presidents

From Christina Rowley, VP of Licensing New York City Tourism + Conventions

CC: Daryl Williams, Department of Small Business Services
James Goebel, Mayor's Office of Contract Services
FCRC@mocs.nyc.gov
Natalie Koepff, New York City Tourism + Conventions

Subject Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Gennaro Jewelers, Inc for the non-exclusive use of City-owned trademarks on merchandise.

Date 9/6/2024

In accordance with Section 1-16 of the Concession Rules of the City of New York, New York City Tourism + Conventions, on behalf of the NYC Department of Small Business Services, is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Gennaro Jewelers, Inc for the non-exclusive use of City-owned trademarks on merchandise.

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

If you have any questions or comments, please feel free to contact Christina Rowley, crowley@nyctourism.com

Thank you.

Rule 1-16: Different Procedure

Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title _____ Concession ID _____

Description _____ Agency _____

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because:

Indicate the Different Procedure utilized

- Sole Source Amendment
 Not-for-Profit Agreement
 Other _____

Proposed Concession Details

Concessionaire _____ Concession Site(s) Yes No
 Not yet determined
EIN/TIN _____ Address _____
Initial Term _____
Renewal Option(s) _____ Borough _____ Community Board _____
Total Potential Term _____ Block# _____ Lot# _____

Proposed Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Prior Concession Details

N/A (No Prior Concession)

Concessionaire _____ EIN or SSN # _____
Initial Term ___/___/___ to ___/___/___ Address _____
Renewal Option(s) ___/___/___ to ___/___/___
Total Potential Term ___/___/___ to ___/___/___ Borough _____ Community Board _____
Concession Site(s) Yes No Block# _____ Lot# _____

Prior Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession Yes No

(if yes, please select all applicable boxes below)

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

This is a Major Concession Yes No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

- Agency notified affected Community Boards and Borough Presidents on ___/___/___

Intent to Seek a Different Procedure

- Agency notified affected Community Boards and Borough Presidents on ___/___/___ (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate

Signature Daryl Williams

Name _____

Title _____ Date _____

City Chief Procurement Officer

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

Signature _____ City Chief Procurement Officer

Date _____

Gennaro Jewelers Inc.

NYCCO-2024-003

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services +

Gennaro Jewelers Inc. produces precious metal and plated with precious metal, jewelry and watches. They have been an authorized licensee of the City's Licensing Program since May 23rd, 2007, and their existing contract expires on December 31st, 2024. Throughout the duration of Gennaro's term, Gennaro has proven to be a strong licensee within the City's Licensing Program, and they continue to remain in good financial standing with the City. Over the term of their previous licenses, Gennaro developed over 50 unique molds and dyes that were created to the specification of the City and consistent with the City's trademarks. These molds and dies cost Gennaro Jewelers approximately \$90,000. With no other licensee in this category it is in the City's best interest to continue the relationship with Gennaro. The items that are the subject of the proposed license would be for sale to the general public as well as specialty versions sold to present and past members of the NYPD. This proposed non-exclusive license agreement will not bar opportunities for other types of jewelry, shields and watches from other manufacturers, however the likelihood of other manufacturers investing such large amounts into developing the specific dyes and molds similar to what Gennaro Jewelers has created is not likely. For these reasons, it is in the City's best interest to negotiate a sole source agreement with Gennaro Jewelers Inc.

Proposed Revenue and term:
To be negotiated

PRIOR TERMS:

Initial Term: (1/1/2020 - 12/31/2022): Guaranteed Minimum Royalty of ten thousand five hundred dollars (\$10,500) due on or before December 31, 2022.

Renewal Term (1/1/2023-12/31/24): Guaranteed Minimum Royalty of Seven Thousand dollars (\$7,000) due on or before December 31, 2024.

Royalty Rate: In each License Year of this License Agreement, for Licensed Products bearing the Property, Licensee shall pay to NYC & Company for the license granted herein a royalty equal to ten percent (10%) of Net Sales.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

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

BE IT FURTHER RESOLVED, that New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) shall submit the sole source agreement it proposes to enter into with *Gennaro Jewelers Inc* to the FCRC for approval.

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____

MEMORANDUM

To All NYC Borough Presidents
All NYC Community Board Presidents

From Christina Rowley, VP of Licensing New York City Tourism + Conventions

CC: Daryl Williams, Department of Small Business Services
James Goebel, Mayor's Office of Contract Services
FCRC@mocs.nyc.gov
Natalie Koepff, New York City Tourism + Conventions

Subject Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Greenlight, LLC. for the non-exclusive use of City-owned trademarks on merchandise.

Date 9/6/2024

In accordance with Section 1-16 of the Concession Rules of the City of New York, New York City Tourism + Conventions, on behalf of the NYC Department of Small Business Services, is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Greenlight, LLC. for the non-exclusive use of City-owned trademarks on merchandise.

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

If you have any questions or comments, please feel free to contact Christina Rowley, crowley@nyctourism.com

Thank you.

Rule 1-16: Different Procedure

Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title Greenlight, LLC **Concession ID** NYCCO-2024-004

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because: See additional Info sheet

Indicate the Different Procedure utilized

- Sole Source Amendment
 Not-for-Profit Agreement
 Other _____

Proposed Concession Details

Concessionaire Greenlight, LLC Not yet determined
 Concession Site(s) Yes No
 EIN/TIN 01-0719778 Address _____
 Initial Term To be negotiated
 Renewal Option(s) To be negotiated Borough _____ Community Board _____
 Total Potential Term To be negotiated Block# _____ Lot# _____

Proposed Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Prior Concession Details

N/A (No Prior Concession)

Concessionaire Greenlight, LLC EIN or SSN # 01-0719778
 Initial Term 01/01/20 to 12/31/22 Address 5855 West 74th Street
 Renewal Option(s) 01/01/23 to 12/31/24 Indianapolis, IN 46278
 Total Potential Term _____ to _____ Borough _____ Community Board _____
 Concession Site(s) Yes No Block# _____ Lot# _____

Prior Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession Yes No

(if yes, please select all applicable boxes below)

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

This is a Major Concession Yes No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

Agency notified affected Community Boards and Borough

Presidents on 09/06/2024

Intent to Seek a Different Procedure

- Agency notified affected Community Boards and Borough Presidents on 09/06/2024 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate

Signature Daryl Williams

Name Daryl Williams

Title ACCO Date 10/28/24

City Chief Procurement Officer

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

Signature _____ City Chief Procurement Officer

Date _____

Greenlight, LLC

NYCCO-2024-004

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services +

Greenlight, LLC produces die cast toy and model cars and accessories in all sizes and scales. They have been an authorized licensee of the City's Licensing Program since October 1st, 2013, and their existing contract is set to expire on December 31st, 2024. Greenlight, LLC has been an excellent licensee for the City's Licensing Program and has maintained good standing with the City throughout their agreement. Greenlight, LLC maintains relationships with big box retailers such as Walmart, Target, Hobby Lobby and other National retailers which gives them the unique ability to place products within these distribution channels where others are not able to do so, giving our brands national placement and opening up the awareness and viability to New York City's Trademarks. While they utilize multiple different IP's within the portfolio they consistently are putting out new NYPD models. Greenlight produces 5-6 new models a year, continually refreshing their product offering throughout the USA. It is important to partner with a die-cast manufacturer that has national presence and continues to keep our IP refreshed and as a top brand within their company. Therefore, it is in the City's best interest to continue the relationship with Greenlight, LLC. This proposed non-exclusive license agreement will not bar opportunities for other types of toy manufacturers.

Proposed Revenue and term:
To be negotiated

PRIOR TERMS:

Initial Term: (1/1/2020 - 12/31/2022): Guaranteed Minimum Royalties of Thirty thousand dollars (\$30,000) On or before December 31, 2022

Renewal Term (1/1/2023-12/31/24): Guaranteed Minimum Royalty of Twenty-Thousand dollars (\$20,000) due on or before December 31, 2024.

Royalty Rate: In each License Year of this License Agreement, Licensee shall pay to NYC & Company a royalty for the license granted herein as follows:

- (1) For the Standard Model: seven percent (7%) of Net Sales. The Standard Model, as used herein, is defined as the Property, the Licensee's mark, and a car brand mark (for eg., Ford or Nissan).
- (2) In the event there is the Standard Model plus an additional mark of a third party (other than the Property, the Licensee's mark and a car brand mark): four percent (4%) of Net Sales.
- (3) In the event, only the Property or only the Property and the Licensee's mark is used: twelve percent (12%) of Net Sales.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a non-exclusive, Sole Source License Agreement with *Greenlight, LLC* for the non-exclusive use of City-owned trademarks on merchandise.

BE IT FURTHER RESOLVED, that New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) shall submit the sole source agreement it proposes to enter into with *Greenlight, LLC* to the FCRC for approval.

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____

MEMORANDUM

To All NYC Borough Presidents
All NYC Community Board Presidents

From Christina Rowley, VP of Licensing New York City Tourism + Conventions

CC: Daryl Williams, Department of Small Business Services
James Goebel, Mayor's Office of Contract Services
FCRC@mocs.nyc.gov
Natalie Koepff, New York City Tourism + Conventions

Subject Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with City Merchandise, Inc for the non-exclusive use of City-owned trademarks on merchandise.

Date 9/6/2024

In accordance with Section 1-16 of the Concession Rules of the City of New York, New York City Tourism + Conventions, on behalf of the NYC Department of Small Business Services, is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with City Merchandise, Inc for the non-exclusive use of City-owned trademarks on merchandise.

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

If you have any questions or comments, please feel free to contact Christina Rowley, crowley@nyctourism.com

Thank you.

Rule 1-16: Different Procedure

Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title City Merchandise Inc. **Concession ID** NYCCO-2024-006

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because: See additional Info sheet

Indicate the Different Procedure utilized

Sole Source Amendment
 Not-for-Profit Agreement
 Other _____

Proposed Concession Details

Concessionaire City Merchandise Inc. Concession Site(s) Yes No
 Not yet determined
EIN/TIN 11-2825148 Address _____
Initial Term To be negotiated
Renewal Option(s) To be negotiated Borough _____ Community Board _____
Total Potential Term To be negotiated Block# _____ Lot# _____

Proposed Concession Revenue

(Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Prior Concession Details

N/A (No Prior Concession)

Concessionaire City Merchandise Inc. EIN or SSN # 11-2825148
Initial Term 01/01/17 to 12/31/20 Address _____
Renewal Option(s) 01/01/21 to 12/31/24
Total Potential Term 01/01/17 to 12/31/24 Borough _____ Community Board _____
Concession Site(s) Yes No Block# _____ Lot# _____

Prior Concession Revenue

(Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession Yes No

(if yes, please select all applicable boxes below)

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

This is a Major Concession Yes No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

Agency notified affected Community Boards and Borough Presidents on 09/06/2024

Intent to Seek a Different Procedure

Agency notified affected Community Boards and Borough Presidents on 09/06/2024 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate

Signature Daryl Williams

Name Daryl Williams

Title ACCO Date 10/28/24

City Chief Procurement Officer

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

Signature _____ City Chief Procurement Officer

Date _____

City Merchandise Inc.

NYCCO-2024-006

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services +

City Merchandise Inc. is a significant New York City souvenir manufacturer. City Merchandise has been an authorized licensee of the City's Licensing Program since 2017 and their existing contract expires on December 31st, 2024. Throughout the duration of City Merchandise's term, they have proven to be a strong licensee within the City's Licensing Program, and they continue to remain in good financial standing with the City. City Merchandise has extremely strong relationships with retailers who operate at New York City airports, Rail roads and large transportation hubs throughout the City and are uniquely important markets for merchandise bearing City trademarks and preservation of these retail outlets are of critical importance to the City's ongoing merchandise licensing program. Over the term of their previous licenses, City Merchandise continues to expand our licensed offerings, through souvenirs and apparel, while continuing to earn the City significant royalties yearly. For these reasons, it is in the City's best interest to continue the relationship and negotiate a sole source agreement with City Merchandise, Inc.

Proposed Revenue and Term:
To be negotiated

Previous Contracted Financial Terms:
(Amounts below reflect the 2023 amendment to this agreement that revised the guaranteed minimum royalties to account for the impacts of the COVID-19 pandemic.)
Guaranteed Minimum Royalties:

The following total "Guaranteed Minimum Royalties" for each License Year shall be payable, inclusive of the applicable Annual Advance set forth above, as follows:

On or before December 31, 2017: Seventy-Five Thousand dollars (\$75,000)
On or before December 31, 2018: Seventy-Five Thousand dollars (\$75,000)
On or before December 31, 2019: Seventy-Five Thousand dollars (\$75,000)

The parties exercised the first renewal option and such renewal was without payment of Annual Advance and the following payment of Guaranteed Minimum Royalties:
On or before December 31, 2022: Thirty-Seven Thousand and Five Hundred dollars (\$37,500).

The parties hereby exercise the second renewal option and such renewal shall be without payment of Annual Advance and the following payment of Guaranteed Minimum Royalties:
On or before December 31, 2024: Twenty-Four Thousand dollars (\$24,000).

Royalty Rates:
For each license year of the License Agreement, City Merchandise, Inc. shall pay royalties equal to fifteen percent (15%) of Net Sales.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 3)

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

BE IT FURTHER RESOLVED, that New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) shall submit the sole source agreement it proposes to enter into with City Merchandise Inc. to the FCRC for approval.

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____

MEMORANDUM

To All NYC Borough Presidents
All NYC Community Board Presidents

From Christina Rowley, VP of Licensing New York City Tourism + Conventions

CC: Daryl Williams, Department of Small Business Services
James Goebel, Mayor's Office of Contract Services
FCRC@mocs.nyc.gov
Natalie Koepff, New York City Tourism + Conventions

Subject Notice of Intent to Seek FCRC approval to utilize a different procedure to negotiate a Sole Source License Agreement with Torkia International Inc, for the non-exclusive use of City-owned trademarks on merchandise.

Date 9/6/2024

In accordance with Section 1-16 of the Concession Rules of the City of New York, New York City Tourism + Conventions, on behalf of the NYC Department of Small Business Services, is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Torkia International Inc, for the non-exclusive use of City-owned trademarks on merchandise.

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

If you have any questions or comments, please feel free to contact Christina Rowley, crowley@nyctourism.com

Thank you.

Rule 1-16: Different Procedure

Concession Agreement Pre-Solicitation Review Memorandum Cover Sheet

Concession Title Torkia International Inc. **Concession ID** NYCCO-2024-005

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Proposed Concession Justification

The Agency has determined it is practicable or advantageous to use a Different Procedure over other methods because: See additional Info sheet

Indicate the Different Procedure utilized

- Sole Source Amendment
 Not-for-Profit Agreement
 Other _____

Proposed Concession Details

Concessionaire Torkia International Inc. Not yet determined
 Concession Site(s) Yes No
 EIN/TIN 13-4143134 Address _____
 Initial Term To be negotiated
 Renewal Option(s) To be negotiated Borough _____ Community Board _____
 Total Potential Term To be negotiated Block# _____ Lot# _____

Proposed Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Prior Concession Details

N/A (No Prior Concession)

Concessionaire Torkia International Inc. EIN or SSN # 13-4143134
 Initial Term 01 / 01 / 2017 to 12 / 31 / 20 Address _____
 Renewal Option(s) 01 / 01 / 21 to 12 / 31 / 24
 Total Potential Term 01 / 01 / 2017 to 12 / 31 / 24 Borough _____ Community Board _____
 Concession Site(s) Yes No Block# _____ Lot# _____

Prior Concession Revenue

- (Check all that apply)
 Annual Minimum Fee \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Formula

Community Board / Borough President Notice Requirements (Check all that apply)

This is a Significant Concession Yes No

(if yes, please select all applicable boxes below)

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

This is a Major Concession Yes No

(if yes, please be aware the award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter)

Agency notified affected Community Boards and Borough Presidents on 09 / 06 / 2024

Intent to Seek a Different Procedure

- Agency notified affected Community Boards and Borough Presidents on 09 / 06 / 2024 (at least 40 days prior to bringing the item to an FCRC meeting) that it intends to seek Committee approval of a Different Procedure. A copy of this notice has been provided to the Mayor's Office of Contract Services for distribution to the committee

Authorized Signatures

Agency Staff

This is to certify that the information presented herein is accurate

Signature Daryl Williams

Name Daryl Williams

Title ACCO Date 10/28/24

City Chief Procurement Officer

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

Signature _____ City Chief Procurement Officer

Date _____

Torkia International Inc.

NYCCO-2024-005

Concession Title _____ **Concession ID** _____

Description Non-Exclusive Use of City-Owned Trademarks on Merchandise **Agency** New York City Tourism + Conventions on behalf of NYC Department of Small Business Services +

Torkia International LLC is one of the largest souvenir and apparel manufacturers for New York City. Torkia has been an authorized licensee of the City's Licensing Program since 2007 and their existing contract expires on December 31st, 2024. Throughout the duration of Torkia's term, they have proven to be a strong licensee within the City's Licensing Program, and they continue to remain in good financial standing with the City. Torkia sells in almost every souvenir shop in New York City and has our merchandise and IP prominently displayed in the shops and on signage in the highly trafficked tourist destinations such as Time Square and Herald square. Additionally, Torkia is the sole option for particular brick and mortar souvenir stores. Through Torkia's very distinct retail distribution we are able to preserve our space in these very important brick and mortar locations and not lose retail space to other licensing programs (e.g., MTA, I love NY) beyond NYC marks that allow tourists to demonstrate allegiance. Over the term of their previous licenses, Torkia continues to expand our licensed offerings, through souvenirs and apparel, while continuing to earn the City significant royalties yearly. For these reasons, it is in the City's best interest to continue the relationship and negotiate a sole source agreement with Torkia International, LLC

Proposed Revenue and term:
To be negotiated

PRIOR TERMS:
Guaranteed Minimum Royalties:
Initial Term: (1/1/2017 - 12/31/2020)

The following total "Guaranteed Minimum Royalties" shall be payable each License Year, inclusive in each case of the applicable Annual Advance set forth above:

- On or before December 31, 2017: four hundred thousand dollars (\$400,000), of which \$225,000 will be for Adult Apparel, \$80,000 will be for Children's Apparel, \$90,000 will be for Souvenirs and \$5000 will be for Plush;
- On or before December 31, 2018: four hundred thousand dollars (\$400,000), of which \$225,000 will be for Adult Apparel, \$80,000 will be for Children's Apparel, \$90,000 will be for Souvenirs and \$5000 will be for Plush;
- On or before December 31, 2019: four hundred thousand dollars (\$400,000), of which \$225,000 will be for Adult Apparel, \$80,000 will be for Children's Apparel, \$90,000 will be for Souvenirs and \$5000 will be for Plush;
- On or before December 31, 2020: four hundred thousand dollars (\$400,000), of which \$225,000 will be for Adult Apparel, \$80,000 will be for Children's Apparel, \$90,000 will be for Souvenirs and \$5000 will be for Plush;

First Renewal Option: (1/1/2021 - 12/31/2022)

The parties hereby exercise the first renewal option and such renewal shall be without payment of Annual Advance or Guaranteed Minimum Royalties except the following payment of Guaranteed Minimum Royalties:

- On or before December 31, 2022, two hundred thousand dollars (\$200,000), of which \$112,500 shall be for Adult Apparel, \$40,000 will be for Children's Apparel, \$45,000 will be for Souvenirs and \$2,500 will be for Plush.

Second Renewal Option: (1/1/2023 - 12/31/2024)

In the event that the parties exercise the second renewal option, such renewal shall be without payment of Annual Advance.

Guaranteed Minimum Royalties during the second renewal term shall be payable as follows:

On or before December 31, 2023: one hundred and fifty one thousand dollars (\$151,000), of which \$90,000 will be for Adult Apparel, \$25,000 will be for Children's Apparel, \$34,000 will be for Souvenirs and \$2,000 will be for Plush;

On or before December 31, 2024: one hundred and fifty-one thousand dollars (\$151,000), of which \$90,000 will be for Adult Apparel, \$25,000 will be for Children's Apparel, \$34,000 will be for Souvenirs and \$2,000 will be for Plush;

Royalty Rates:

In each License Year of this License Agreement, Licensee shall pay to NYC & Company for the license granted herein a royalty equal to eleven percent (11%) of Net Sales of adult apparel and children's apparel, and fifteen percent (15%) of Net Sales of souvenirs and plush.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 4)

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

BE IT FURTHER RESOLVED, that New York City Tourism + Conventions on behalf of the New York City Department of Small Business Services (“SBS”) shall submit the sole source agreement it proposes to enter into with Torkia International Inc. to the FCRC for approval.

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____



NYC Parks

David Cerron
Assistant Commissioner
Business Development & Special
Events

T 212.360.3457

E david.cerron@parks.nyc.gov

**City of New York
Parks & Recreation**

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

NOTICE OF PUBLIC HEARING

To: Honorable Vanessa Gibson, Bronx Borough President
Honorable Antonio Reynoso, Brooklyn Borough President
Honorable Mark Levine, Manhattan Borough President
Honorable Donovan Richards, Queens Borough President
Honorable Vito Fossella, Staten Island Borough President
Thomas Alexander, District Manager, Bronx Community Board #4
Rafael Moure-Punnett, District Manager, Bronx Community Board #6
Yajaira Arias, Chair, Bronx Community Board #7
William Rivera, District Manager, Bronx Community Board #9
Gerald Esposito, District Manager, Brooklyn Community Board # 1
Lenny H. Singletary III Chair, Brooklyn Community Board # 2
Mike Racioppo, District Manager, Brooklyn Community Board #6
Jeremy Laufer, District Manager, Brooklyn Community Board #7
Michelle George, District Manager, Brooklyn Community Board #8
Dante B. Arnwine, District Manager, Brooklyn Community Board #9
Marnee Elias-Pavia, District Manager, Brooklyn Community Board #11
Shawn Campbell, District Manager, Brooklyn Community, Board #14
Zach Bommer, District Manager, Manhattan Community Board #1
Mark Diller, District Manager, Manhattan Community Board #2
Susan Stetzer, District Manager, Manhattan Community Board #3
Jesse Bodine, District Manager, Manhattan Community Board #4
Marisa Mack, District Manager, Manhattan Community Board #5
Jesús Pérez, District Manager, Manhattan Community Board #6
Maxwell Vandervliet, District Manager, Manhattan Community Board #7
Will Brightbill, District Manager, Manhattan Community Board #8
Eutha R. Prince, District Manager, Manhattan Community Board #9
Shatic Mitchell, District Manager, Manhattan Community Board #10
Angel D. Mescain, District Manager, Manhattan Community Board #11
Ebenezer Smith, District Manager, Manhattan Community Board #12
Florence Koulouris, District Manager, Queens Community Board #1
Debra Markell Kleinert, District Manager, Queens Community Board #2
Giovanna A. Reid, District Manager, Queens Community Board #3
Christian Cassagnol, District Manager, Queens Community Board #4
Marilyn McAndrews District Manager, Queens Community Board #7
Joan Cusack, District Manager, Staten Island Community Board #1

From: Kat Cognata, Senior Project Manager

Subject: Notice of Joint Public Hearing: November 12, 2024; For the Intent to Award a Concession Agreement to The Council on the Environment Inc. D\B\A GrowNYC for the Operation and Management of Greenmarket Farmers' Markets at various parks, Citywide. Concession No. B40-O

Date: October 28, 2024



NYC Parks

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks & Recreation (“NYC Parks”) to be held on November 12, 2024, at 2 Lafayette Street, Room 1412, New York, NY 10007 commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession a License Agreement (“License”) to The Council on the Environment Inc. DIBA GrowNYC for the Operation and Management of Greenmarket Farmers’ Markets at various parks, Citywide.

The Term of the Concession shall commence upon the date in the written Notice to Proceed (“Commencement Date”), and shall terminate no later than October 31, 2034.

Compensation to the City will be as follows:

Operating Year	PAYMENT SCHEDULE		
	Regular Locations	CDBG Locations	Farmstand Locations
1	12.25% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
2	12.25% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
3	12.25% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
4	12.50% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
5	12.50% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
6	12.50% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>



NYC Parks

		<u>site</u>	<u>site</u>
7	12.75% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
8	12.75% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
9	12.75% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>
10	12.75% of Gross Receipts	<u>\$25 per month per active operating site</u>	<u>\$25 per year per active operating site</u>

Written testimony may be submitted in advance of the hearing electronically to fcrc@mocs.nyc.gov. All written testimony can be submitted up until the close of the public hearing and will be distributed to the FCRC after the hearing.

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

1. Submit a written request to NYC Parks at concessions@parks.nyc.gov from October 28, 2024, through November 12, 2024.
2. Submit a written request by mail to NYC Department of Parks and Recreation, Revenue Division, 830 Fifth Avenue, Room 407, New York, NY 10065. Written requests must be received by November 12, 2024. For mail-in request, please include your name, return address, and License # B40-O.
3. Download from NYC Parks website at <https://www.nycgovparks.org/opportunities/concessions/rfps-rfbs-rfeis> from October 28, 2024, through November 12, 2024.

The agenda and related documentation for the hearing will be posted on the MOCS website at <https://www.nyc.gov/site/mocs/opportunities/franchises-concessions.page>

For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 298-0800. Any person requiring reasonable accommodation for the public hearing should



NYC Parks

contact MOCS at least five (5) business days in advance of the hearing to ensure availability.

Rule 1-16: Different Procedure

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Greenmarkets Citywide Concession ID B40-O

Description Concession to operate and manage Greenmarket Farmers' Markets at various parks Citywide Agency NYC Department of Parks and Recreation

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Council on the Environment Inc. D/B/A GrowNYC Telephone 212-788-7900
 Address 100 Gold Street, New York, NY 10038 EIN or SSN # 13-2765465
 Suite #3300 Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term NTP to October 31, 2034 Concession Site(s) Yes No
 Renewal Option(s) _____ to _____ Address Citywide* please see additional info sheet
 _____ to _____
 Total Potential Term 10 years Borough Brooklyn, Bronx, Manhattan Community Board Various
 >20 years – FCRC unanimously approved term on ___/___/___ Block# Various Lot# Various

Recommended Annual Revenue

(Check all that apply)
 Annual Fee(s) \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Please see additional info sheet

Selection Procedure Requirements

Please select the appropriate Different Procedure method justification below:

- Sole Source
- Amendment or extension to an existing concession agreement
- Not-for-Profit concession agreement
- Other (Please specify)

Award is a Major Concession

- Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
 - CPC approved on ___/___/___
 - City Council approved on ___/___/___
 - N/A
- No

Negotiation Requirements

Below, please describe the nature of negotiations conducted, including with respect to the amount of revenue offered:

Parks and GrowNYC negotiated the percentage of gross receipts GrowNYC will be required to pay the city over the term of the Agreement. Over the term of the previous agreement, GrowNYC paid the city as much as 12.75% of gross receipts for revenue generated at "all" Greenmarket locations. Several GrowNYC market locations are now within designated Community Development Block Grant (CDBG) neighborhoods. Organizations that participate in the New York State Farmers' Market Nutrition Program ("FMNP") may obtain a Permit to operate Farmer's markets at parks within CDBG areas. GrowNYC is eligible to obtain FMNP permits to operate markets in CDBG areas at

Award Requirements

The agency determined that the award of this concession is in the best interest of the City because:

GrowNYC is a not-for-profit organization that has successfully operated and managed Greenmarket Farmers' Markets ("Greenmarkets") in the City since 1976, including over 30 years pursuant to License Agreements with NYC Parks. Currently, GrowNYC operates and manages Greenmarkets at various parks in the Bronx, Brooklyn, Manhattan, and Queens. GrowNYC currently generates in excess of \$439,000.00 a year in revenues for the City.

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: 11 / 12 / 24

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on 10 / 28 / 24 (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on ___/___/___ (date of the FCRC public meeting)

Votes in favor: ___ Votes against: ___

OR

The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ___/___/___

Authorized Signatures

Agency Staff

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

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

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

Signature _____ Date _____

City Chief Procurement Officer

Greenmarkets Citywide

B40-O

Concession Title _____ **Concession ID** _____

Description Concession to operate and manage Greenmarket Farmers' Markets at various parks Citywide **Agency** NYC Department of Parks and Recreation

Operating Year PAYMENT SCHEDULE

Regular Locations	CDBG Locations	Farmstand Locations
Year 1 12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 2 12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 3 12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 4 12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 5 12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 6 12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 7 12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 8 12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 9 12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
Year 10 12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site

* Citywide Concessions Sites are as follows:

Park / Greenmarkets	Borough	Block-Lot	CB
Joyce Kilmer	Bronx	2469-1	4
Poe Park	Bronx	3155-1	4
Virginia Park	Bronx	2532-6	9
Bartel-Pritchard	Brooklyn	1117-1	6
Columbus Park	Brooklyn	139-1	2
Fort Green Park	Brooklyn	2005-1	2
Grand Army Plaza	Brooklyn	1183-1	6,8
McCarren Park	Brooklyn	2286-1	1
Milestone Park	Brooklyn	6296-1	11
Sunset Park	Brooklyn	921-1	7
Abingdon Square	Manhattan	624-24	2
Bowling Green	Manhattan	12-28	1
City Hall Park	Manhattan	122-1	1
Dag Hammarskjold	Manhattan	1335-20	6
Inwood Hill/Isham Park	Manhattan	2255-2000	12
Richard Tucker Square	Manhattan	1137-36	7
Theodore Roosevelt Park	Manhattan	1130-1	7
Tompkins Square Park	Manhattan	404-39	3
Union Square Park	Manhattan	845-2, 10	2,5
Washington Market Park	Manhattan	142-1	1
Bowne Playground	Queens	4854-1	7
Lou Lodati Playground	Queens	178-17	2
Maple Playground	Queens	5033-50	7
Park / Farmstands	Borough	Block-Lot	CB
Morrisani	Bronx	2418-37	3
Morris Heights	Bronx	2953-10	5
Gouverneur	Bronx	2522-37	3
Ridgewood	Queens	3398-1	5
Forest Park	Queens	3380-1	5,6,9

LICENSE AGREEMENT

BETWEEN

Council on the Environment, Inc., D/B/A “GROWN NYC”

AND

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

for

**OPERATION AND MANAGEMENT OF
“GREENMARKET” FARMERS MARKETS**

CITYWIDE, NEW YORK

**BRONX:
Joyce Kilmer
Poe Park
Virginia Park**

**QUEENS:
Bowne Playground
Lou Lodati Playground
Maple Playground**

**BROOKLYN:
Bartel-Pritchard
Columbus Park
Fort Green Park
Grand Army Plaza
McCarren Park
Milestone Park
Sunset Park**

**MANHATTAN:
Abingdon Square**

**Bowling Green
City Hall Park
Dag Hammarskjold
Inwood Hill/Isham Park
Richard Tucker Square
Theodore Roosevelt Park
Tompkins Square Park
Union Square Park
Union Square Park
Washington Market Park**

Dated: _____, 2024

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EXHIBIT A GrowNYC Greenmarket Permit Locations, Days and Hours of Operations

EXHIBIT B 2024-2025 Greenmarket Rules and Agreement

EXHIBIT C Certification by Insurance Broker or Agent

EXHIBIT D Earned Safe and Sick Leave Law Concession Agreement Rider

This **SOLE SOURCE LICENSE AGREEMENT** (“**License Agreement**” or “**License**”) made this _____ day of _____, 2024, between the City of New York (the “**City**”) acting by and through the Department of Parks & Recreation (“**Parks**”), located at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065) and Council on the Environment, Inc., D/B/A “GrowNYC” (the “**Licensee**”), a New York not-for-profit corporation located at 100 Gold Street, Suite 3300, New York, New York 10038.

WITNESSETH:

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

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

WHEREAS, the Commissioner has jurisdiction over the areas within the City’s parks designated and described with particularity in **Exhibit A**, attached hereto, in the Boroughs of Manhattan, the Bronx, Brooklyn, and Queens (“**Licensed Premises**” or “**Premises**”); and

WHEREAS, the Commissioner desires to provide for the operation of farmers’ markets (“**Markets**”), selling items 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 and grains, and any other product which conforms to the Greenmarket Rules (as defined below), and any other operations as approved in writing by Parks, which include but are not limited to organics collection by Lower East Side Ecology Center and Wearables textile collection, for the accommodation and enjoyment of the public and for support of regional farmers; and

WHEREAS, Licensee has successfully operated numerous Markets on New York City parkland for 48 years; and

WHEREAS, on November 8, 2023, the Franchise and Concession Review Committee (FCRC) authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation and management of Markets; and

WHEREAS, Licensee desires to use and maintain the Licensed Premises (as defined below) on various days of the week for various Markets in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying the rights and obligations with respect to the use and maintenance of the Licensed Premises.

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

1. GRANT OF LICENSE

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to use and maintain the Licensed Premises, as shown in Exhibit A, as Markets for the use and enjoyment of the general public as hereinafter defined in accordance with the provisions herein and to the satisfaction of the Commissioner.

1.2 It is expressly understood that this License is not a lease or other conveyance of land, building, space, equipment or parking rights, but that during the Term of this License, Licensee shall have, subject to the terms of this License, the exclusive right to operate Markets at the Licensed Premises at the times of day and on the days of the week outlined in Exhibit A, and for the purposes herein provided. Licensee has the right to occupy and use the Licensed Premises as provided for herein for the duration of the Term as defined below, so long as this License is not terminated by the Commissioner in accordance with the terms hereof.

1.3 Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or her representatives and to other City, State and Federal officials having jurisdiction for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement. Parks 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.

1.4 Licensee may utilize the name "GrowNYC" and "Greenmarket" for its operations at the Licensed Premises. Licensee may thereafter use such name in its operations at the Licensed Premises as shall be approved in advance in writing by Parks. Parks may require that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. The City will not own a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with Parks' property.

1.5 (a) All intellectual property rights in the Licensed Premises, park names and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks, including Parks' signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications are the property of the City ("City IP"). Licensee may use the park names connection with its operations under this License Agreement only to identify the location of the Licensed Premises, any other uses of park names or any other City IP may be only used pursuant to a separate written agreement between the City and Licensee. 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. Parks reserves the right to approve of any name selected by the Licensee for the Concession.

(b) 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.

(c) 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 "GrowNYC" and "Greenmarket" for the operation at the Licensed Premises. Licensee represents and warrants that Licensee has all rights, title and interest in the approved trade names above, or has acquired or properly licensed such rights, title and interest, and that to the extent Licensee shall cease to possess such rights, title, or interest, it shall immediately notify Parks and cease to use such trade names in connection with the operations under this License Agreement.

(d) Parks reserves the right to issue a separate Request for Proposals for Naming Rights at the Licensed Premises. Licensee may be required to use the name that Parks selects.

2. DEFINITIONS

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

(a) "Alterations" shall mean any and all changes to the Licensed Premises which affect in any manner, or have any impact whatsoever upon, the character, structures upon, appearance of, or design of any portion of the Licensed Premises.

(i) Alterations include any construction, reconstruction, renovation, rehabilitation, modification, or improvement of the Licensed Premises, including major landscaping, planting or removal of trees, flowers or shrubbery.

(ii) Alterations also include all "Additional Fixed Equipment," as that term is defined below, which the Licensee installs or causes to be installed on the Licensed Premises.

(iii) Alterations shall not include set-up, cleanup or maintenance required to be performed in the normal course of use of the Licensed Premises.

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

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

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

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

(f) “Farmer-vendors” as used herein shall refer to all individuals who have contracted with Licensee for use of a Space or Spaces, as defined below, who desire to sell goods 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 product which conforms to the Greenmarket Rules, at any of Licensee’s Markets at the Licensed Premises.

(g) “Farmstands” shall mean food access locations operated by Licensee that sell locally grown food from regional farmers in underserved and under-resourced neighborhoods across New York City.

(h) “Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises existing as of the Commencement Date, whether or not removal of said equipment would damage Licensed Premises.

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

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

(i) “GrowNYC Merchandise” shall refer to compost, clothing, totebags, and other goods or items that are, in each case, marketed and sold by GrowNYC under the GrowNYC label.

(j) **(i)** “Gross Receipts” shall include amounts charged by Licensee pursuant to this License from Sales to Farmer-vendors, without deduction or set-off of any kind. However, Gross Receipts shall exclude the amount of any Federal, State or City taxes, which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against such Sales and shall also exclude any prepaid payments by Farmer-vendors for Spaces that are not used to the extent such payments are refunded to a Farmer-vendor. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises and shall include all receipts of Licensee 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 \$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.

(ii) Gross Receipts shall include Sales made for cash or credit (credit Sales shall be included in gross receipts as of the date of the Sale), regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums received by Licensee from all sources from the operation of this License shall be included in Gross Receipts.

(iii) Gross Receipts shall not include funds, grants or contributions received by Licensee from foundations or from other sources. However, Gross Receipts shall include any funds received by Licensee from entities due to such entities’ use of, or impact upon, any part(s) of the

Licensed Premises, whether or not such entity possesses a Parks or City permit to use the Licensed Premises.

(iv) Gross Receipts shall also include Licensee's income from rental and sublicense, or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees unless otherwise approved in writing by Parks.

(v) Gross Receipts shall not include revenues from the sale by GrowNYC of GrowNYC Merchandise. However, Licensee shall submit a report generated from the sale of GrowNYC Merchandise as described in Section 4.5(a) below.

(k) "Licensed Premises" shall mean the areas described in **Exhibit A** and any further Alterations constructed thereon including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping thereon.

(l) "Sales" as used herein refers to fees received by Licensee from sublicenses of Spaces as defined in this Section below to Farmer-vendors. "Sales" does not refer to the Farmer-vendors' own sales of their products to the public from their vehicles and/or stands within those Spaces.

(m) "Spaces" shall refer to the units of occupancy within the Licensed Premises for the Farmer-vendors and Farmstands. Spaces are the area allotted to each Farmer-vendor for their vehicle and stand by Licensee for sales of their products to the public.

(n) "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 the Licensee a written Notice to Proceed following registration with the Comptroller. The Term of the Concession shall commence upon the date in the written Notice to Proceed ("Commencement Date"), and shall terminate no later than October 31, 2034 ("Termination Date" or "Expiration Date"). The period between the Commencement Date and Termination Date shall be the License Term ("Term").

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

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 the 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 the 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 three (3) 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 or its employees and agents.

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

3.6 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, the City, in accordance with law, 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 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. Pursuant to Section 4.4 herein, the 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;
- (b)** Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks on 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, which Parks shall extend its reasonable efforts to accomplish, 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.

4. PAYMENT TO CITY

4.1 (a) Licensee shall pay to City, according to the following schedule, the (i) percentage of yearly Gross Receipts with respect to Regular Locations and (ii) dollar amount set forth below with respect to the CDBG Locations and Farmstands Locations:

Operating Year	PAYMENT SCHEDULE		
	Regular Locations	CDBG* Locations	Farmstand Locations
1	12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
2	12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
3	12.25% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
4	12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
5	12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
6	12.50% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
7	12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
8	12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
9	12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site
10	12.75% of Gross Receipts	\$25 per month per active operating site	\$25 per year per active operating site

*For purposes of this License Agreement, “CDBG” means a location in or adjacent to a “Community Development Block Grant” eligible neighborhood as determined by the U.S. Department of Housing and Urban Development (“HUD”). The determination of what constitutes a CDBG location shall be made at the beginning of each Operating Year based on the most recent data available from HUD.

Licensee agrees to work with Parks in good faith to pilot new Greenmarket and/or Farmstand locations.

4.2 The Licensee shall pay (a) the percentage fee with respect to the Regular Locations based on the prior month's Gross Receipts and the applicable (b) CDBG fee and (c) Farmstand fee on the thirtieth (30th) day of each month for the prior month's fee.

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, percentage 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 \$1,000.00, due on the 1st day of the month must be received no later than the 10th day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11th day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or Commissioner's right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) Upon affixing its signature to this License, Licensee shall provide the City with a certified check, or any other negotiable instrument approved by Parks, payable to the City of New York Department for Parks & Recreation the amount of \$45,000 as its Security Deposit (the "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. However, Licensee may request the City to place cash deposited hereunder in an interest-bearing account at Licensee's sole cost and expense. If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) business 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 (30th) day following each month of each Operating Year, Licensee shall submit to Parks a statement of Gross Receipts, in a form approved by Parks, signed and verified by the Licensee's Director of Finance, reporting any Gross Receipts generated under this License Agreement during the preceding month. The report referenced in the preceding sentence shall report the Gross Receipts generated at the Licensed Premises and specify the following:

- | | |
|-----------------|--|
| Sales- | Licensee's receipts from Sales from Farmer-vendors |
| Sponsorships | Licensee's receipts from Sponsorships (as described in Section 7.20) |
| Miscellaneous-- | Any other sources of income realized by Licensee related to or pursuant to Licensee's operations on the Licensed Premises (it being understood that (x) funds, grants or contributions received by Licensee from foundations or from other sources and (y) revenues from the sale by GrowNYC of GrowNYC Merchandise are excluded from the requirements of this Section 4.5). Any such activity is subject to the prior written approval of Commissioner, which approval shall not be unreasonably withheld or delayed. |

(b) On or before the end of the Operating Year, Licensee shall submit to Parks a statement of gross receipts, in a form approved by Parks, signed and verified by the Licensee's Director of Finance, reporting any gross receipts generated in connection with the below during the current Operating Year. The report referenced in the preceding sentence shall report the gross receipts generated at the Licensed Premises and specify the following:

- | | |
|---------------------|---|
| Sales - | Licensee's receipts from Sales from Farmstands. Notwithstanding anything to the contrary contained in this License Agreement, Gross Receipts shall not include revenues from the sales in connection with the Farmstands. |
| Merchandise Sales - | Licensee's receipts from Merchandise Sales (as defined in Section 2.1 above). Gross Receipts shall not include revenues from the sales by GrowNYC of GrowNYC Merchandise pursuant to Section 2.1(j)(v). |

(c) Licensee must indicate whether or not these amounts are inclusive of sales tax collected.

(d) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City

sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax (if applicable), may be deducted from Gross Receipts or from the compensation due under this License.

4.6 On or before the sixtieth (60th) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee and in a format approved by Parks.

4.7 (a) Licensee, during the Term of this License, shall maintain, and shall cause any sublicensee 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. Licensee shall have sequentially numbered, signed contractual agreements for each Space used by a Farmer-vendor. Such contracts shall include the fee paid for the Space and the location of the Space. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a dedicated bank account for all deposits related to this concession's generated revenue. 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. 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.

(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. 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 (1) month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount

of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) years (multiplied by the applicable Consumer Price Index (“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, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 through 4.7 hereinabove, Licensee may be subject to a charge of Five Hundred Dollars (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

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 Parks, the Comptroller and other duly authorized representatives of the City shall have the right, during business hours, 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 shall also permit the inspection by Parks, the Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, point of sale systems, 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.

5.2 Licensee’s failure or refusal 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 material way by the Licensee in such an audit or examination is presumed

to be a failure substantially to 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. ALTERATIONS

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

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

(i) Obtain Commissioner's written approval (which shall not be unreasonably withheld) 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 6.1(b)(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 her discretion and upon prior written notice to Licensee, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, Alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

6.2 No temporary storage or other ancillary structures may be erected without a License obtained from Parks. Licensee or Farmer-vendor stands, including tables, and tents, erected during hours of market operation, are understood to be excluded from this prohibition.

7. OPERATIONS

7.1 Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises as Markets for the accommodation, use and enjoyment of the general public during such days and times of day, as set forth in **Exhibit A** hereto, or as otherwise approved by Parks, and in such manner as the Commissioner shall reasonably prescribe. Licensee shall provide the necessary personnel and equipment to monitor and coordinate Licensee's and the Farmer-vendors' operations at the Licensed Premises.

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

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in at the Licensed Premises.

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

7.4 (a) Licensee, at its sole cost and expense, shall make repairs to and clean up any damage caused by its personnel or Farmer-vendors at the Licensed Premises within twenty-four (24) hours of occurrence. If such repairs and clean-up cannot be completed within 24 hours, as determined by Parks, Licensee shall commence such repairs or clean-up within twenty-four (24) hours of occurrence and proceed with due diligence in carrying them out until they are completed.

(b) Licensee shall require that all Farmer-vendors comply with all requirements of the New York State Department of Agriculture and Markets. In addition, Licensee shall require that, to the extent required by law, rule, or regulation, all Farmer-vendors selling processed or prepared food obtain Temporary Food Service Establishment Permits from the City's Department of Health and Mental Hygiene.

(c) Licensee shall ensure that the Farmer-vendors shall not expand their selling space beyond their allotted Spaces.

(d) Licensee shall not, and shall ensure that Farmer-vendors shall not, in any way block any entrances, exits, paths or roadways of the Licensed Premises, park or leave vehicles on sidewalks, or leave vehicles on the Licensed Premises overnight, unless otherwise permitted.

(e) Licensee shall not, and shall ensure that Farmer-vendors shall not, allow trash or bags resulting from their operations to be deposited in the parkland surrounding the Licensed Premises.

(f) Licensee shall pressure wash all sidewalks, benches and other structures on the Licensed Premises at Union Square Market and Grand Army Market, in each case on a quarterly basis.

7.5 Parks shall issue parking permits to Licensee and Farmer-vendors identified by Licensee for use during the days and times of operation of the Licensed Premises.

7.6 Licensee shall sublicense Spaces on the Licensed Premises to Farmer-vendors for use on days of Market operations. It is Licensee's intent and the intent of this License Agreement that the Farmer-vendors only sell products 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, and/or any other product(s) which conform to the Greenmarket Rules. Licensee shall ensure that the Farmer-vendors shall sell their products from their trucks, vans or cars, using a table or non-permanent stand for display purposes.

7.7 Under no circumstances may the Licensee sell, allow Farmer-vendors to sell, or cause to be sold on or about the Licensed Premises any cigarettes, cigars, or other tobacco or non-tobacco smoking products. No signs or any other kind of advertising for tobacco or non-tobacco smoking products shall be permitted at the Licensed Premises. Unopened farm-produced wine, beer and spirits that are produced in the region specified in Appendix B of the Greenmarket Rules (as defined below) may be sold to Greenmarket patrons by Farmer-vendors on the Licensed Premises. Licensee shall require that the Farmer-vendors shall comply with all applicable laws, rules, and regulations regarding the sale, tasting and advertising of wine, beer and/or spirits including those of the New York State Liquor Authority.

7.8 Smoking anywhere on the Licensed Premises is prohibited.

7.9 Licensee shall not, and shall require that Farmer-vendors shall not, use in their operations any polystyrene packaging or polystyrene food containers except to the extent such polystyrene packaging or food containers are required by applicable law.

7.10 Licensee further warrants that all food, beverage, merchandise or supplies of any kind sold pursuant to this License shall be of good quality and as represented to the public, as set forth in the Greenmarket Rules and Council on the Environment, Inc. D\B\A GrowNYC Agreement, both annexed hereto as **Exhibit B**, as revised from time to time (together, the “Greenmarket Rules”). Any staff assigned by Licensee to sell food and beverages to the public at the Licensed Premises must possess all required Federal, State, and City authorizations and possess, and at all times display, appropriate Department of Health and Mental Hygiene (“DOHMH”) permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH. At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler’s license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise. The food service facility is subject to DOHMH letter grading program.

7.11 Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for the security at the Licensed Premises set forth on such plan, during the hours of its operations as set forth on **Exhibit A**. Licensee shall secure the Licensed Premises and remove any equipment (including barriers) therefrom before closing for the day.

Licensee shall provide equipment for security of 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.

7.12 Licensee shall record all Sales and Miscellaneous transactions (as referred to in Section 4.5(a)) involved in the operation of this License, and keep books and records as set forth in Section 4.7 hereinabove and as deemed acceptable by the Commissioner.

7.13 Licensee shall employ market managers to oversee each Market and an operations manager to supervise all Markets. The operations manager shall be available to Parks by telephone during all hours of operation.

7.14 If Licensee discovers that a Farmer-vendor is charging its patrons in an inconsistent manner for any goods provided under this License, Licensee must take appropriate action to ensure that such behavior is remedied.

7.15 Licensee shall promptly give written notice to Parks within twenty-four (24) hours of any major accidents, unusual incidents, claim for injury, death, property damage, or theft that may be asserted against Licensee with respect to the Licensed Premises. Licensee shall prepare and provide to Parks reports of major accidents or unusual incidents occurring on the Licensed Premises and known to Licensee on a regular basis and in a format reasonably acceptable by the Commissioner. Licensee shall further require the Farmer-vendors to prepare and provide to it reports of major accidents or unusual incidents occurring on the Licensed Premises promptly after they happen. 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. 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.

7.16 Licensee shall maintain close liaison with the Parks Enforcement Patrol ("PEP") and New York City Police and 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 and shall immediately report any illegal activity to the police upon becoming aware of same.

7.17 Any sign posted by the Licensee at the Licensed Premises, and any advertisement or promotion used or permitted by Licensee at the Licensed Premises in connection with Licensee's operations at the Licensed Premises, shall be subject to the approval of the Commissioner and shall be appropriately located. At each and every Greenmarket operation on the Licensed Premises, there shall be at least one centrally located "ground sign" stating that the Licensed Premises are a New York City Parks & Recreation concession operated by GrowNYC. At the Union Square Market, there shall be two (2) such signs centrally located. A sample of each new Greenmarket advertisement shall be sent for Parks' approval to The Revenue Division, The Arsenal – Room 407, 830 Fifth Avenue, Central Park, New York, NY, 10065. Parks shall cooperate with and assist the Licensee in all reasonable respects in Licensee's attempt to obtain an agreement with the appropriate department(s) and/or agency(ies) of the City for the fabrication of signs to be posted by Licensee at the Licensed Premises.

7.18 Licensee shall provide, during the days and times of operation of the Markets on the Licensed Premises, free access to the Licensed Premises to the Commissioner or her representatives and to other City, State and federal officials having jurisdiction, for inspection purposes. In the event that Licensee fails to comply with such written notice or fails to 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, notwithstanding any other provisions herein, then Commissioner may terminate this License.

7.19 The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), other than signage concerning price and variety traditionally used by Farmer-vendors, are subject to Parks' prior written approval. Under no circumstances shall Licensee be permitted, nor shall it permit the Farmer-vendors, to place advertisements on the exterior of the Licensed Premises. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. The following standards will apply to all allowed advertising: any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

7.20 (a) Licensee must obtain the prior written approval of Parks prior to entering into any marketing plan or sponsorship agreement that relates to the use of, or impact upon, any part(s) of the Licensed Premises, which approval shall not be unreasonably conditioned, withheld or delayed. In the event Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests. The Licensee shall not accept sponsorship of any kind on behalf of any kind of tobacco products, non-tobacco smoking product, or electronic cigarettes.

(b) The City shall be entitled to ten percent (10%) of all fees and payments generated and received by Licensee in connection with a Permitted Sponsorship. Licensee shall make available such fees and/or payments to the City within thirty (30) days of receipt of such amounts.

7.21 Licensee acknowledges that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee will be required to purchase merchandise from authorized licensees of the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events. The knowing sale by Licensee of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement and the forfeiture of the Security Deposit.

7.22 Solely with respect to Licensee's and the Farmer-vendors' equipment, tents and other installations at Licensee's operations at the Licensed Premises, Licensee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Licensed Premises to the extent Licensee is required by law, including, but not limited to, installing ramps, as needed, portable toilets, as needed, and providing ADA signage. Licensee shall comply with all applicable City, State, and federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee may exceed accessibility requirements whenever possible.

7.23 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 development, operation and maintenance of the Licensed Premises in accordance with all applicable federal, State, and City laws, rules, and regulations, and in accordance with the terms of this License. In order to be in compliance with this License

Agreement, Licensee must fulfill all of the obligations contained herein. Failure to fulfill any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner.

7.24 Should the Commissioner decide that Licensee is not operating the Licensed Premises in a reasonably satisfactory manner, Commissioner may, in writing, order Licensee to improve operations or correct such conditions as Commissioner may deem reasonably 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, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

7.26 Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department of New York (FDNY) Codes.

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

7.28 Licensee acknowledges that this License Agreement does not grant Licensee exclusive rights to sell in the parks in which the Licensed Premises are located other than as set forth in Section 1.2 hereof. Subject to the foregoing, Parks may grant other licenses or permits to vendors to sell similar items authorized under this License Agreement within the same park as that in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages Licensee to report illegal vendors by calling 311.

7.29 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' concession unit will coordinate these activities with the licensee.

7.30 Licensee shall comply with all laws, rules and regulations of appropriate agencies, including the Department of Environmental Protection (DEP), regarding noise levels, and Licensee

shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved in advance in writing by Parks. **All outdoor amplified sound must end no later than 10pm.**

7.31 Parks’ inspectors may visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, Parks may issue directives regarding deficiencies the Licensee shall rectify in a timely fashion. Violations of the terms and conditions of this License may also result in the assessment of liquidated damages which, if not paid promptly, may be deducted from Licensee’s Security Deposit. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License Agreement, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate this License Agreement. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

Provision	Liquidated Damage Per Occurrence
Unauthorized merchandise	\$150
Missing or unauthorized price list	\$250
Expanding operations beyond Licensed Premises	\$350
Blocked paths, roadways and exits and vehicles on sidewalks	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Licensee or Farmer-Vendor cars, trucks, vehicles or stands leaking fluid	\$350
Damaged Equipment or Structure(s)	\$350
Graffiti or Dirty Equipment	\$350
Unauthorized Advertising	\$350

Operating at Unauthorized Location	\$250
Operating during Unauthorized Hours	\$250
Damage to Parks Property (trees, fencing, hex paving, etc.)	\$350
Improper Storage	\$350
Operating without applicable permit(s) or license(s)	\$350
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Illegally Parked Greenmarket or Farmer-Vendor Vehicle on Parkland/Unauthorized Vehicular Activities	\$350

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

1. Filing an Appeal

A. If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why Licensee 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.

8. MAINTENANCE, SANITATION AND REPAIRS

8.1 Licensee, at its sole cost and expense (or through arrangements with third parties) and to the reasonable satisfaction of Commissioner, shall throughout the Term of this License, for the days and times during which Licensee occupies the Licensed Premises, keep and preserve in good and safe order and condition the Licensed Premises and equipment associated with Licensee's operations, including all areas within the Licensed Premises. Licensee shall, at all such times, keep the Licensed Premises reasonably clean, litter free and neat. Licensee shall clean and maintain the Licensed Premises at the end of each day of operation on the Licensed Premises, as provided below, or more frequently if required for the safety of the public's use of the Licensed Premises. Licensee shall repair or replace as necessary, and maintain in good working order, any and all equipment installed or placed on the Licensed Premises by Licensee. Licensee may utilize equipment-maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. The parties acknowledge that Licensee's use and operations at each Licensed Premises are occasional or periodic as provided herein and not continuous and exclusive. Therefore, Licensee's obligations hereunder in connection with any particular Licensed Premises are limited to those times that Licensee is operating at such Licensed Premises, and Parks is otherwise responsible for each Licensed Premises and all obligations arising therefrom except for times during and resulting from Licensee's operations.

8.2 Licensee shall maintain the Licensed Premises, as described herein, to the reasonable satisfaction of the Commissioner in a good and worker-like manner. In part to secure Licensee's obligation to maintain the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4 herein.

8.3 Licensee shall ensure that all Farmer-vendor-generated waste, garbage, refuse, rubbish or litter shall be bagged and removed from the Licensed Premises by the Farmer-vendors themselves. Licensee shall ensure that all consumer/park patron waste, garbage, refuse, rubbish and litter which results from Licensee's operations and collects upon the Licensed Premises during Licensee's days of operation, shall be collected, bagged and removed by the Farmer-vendors at the Licensee's sole cost and expense. Licensee may provide waste receptacles at the Licensed Premises during its days of operation, but must remove such receptacles at the end of the day. In performing its duties under this section, Licensee shall comply, and shall require the Farmer-vendors to comply, with all applicable recycling laws, ordinances, and programs of the City, State, and Federal governments.

8.4 Licensee shall, at its sole cost and expense, be responsible for the removal of snow and any necessary equipment to effect such snow removal from the Licensed Premises during the days and times of operation of the Markets on the Licensed Premises in order to safely conduct Licensee's operations. Licensee may, from time to time, request that Parks remove any snow from the Union Square Market and Grand Army Plaza Market, subject to Parks' sole discretion and availability.

8.5 Except as explicitly permitted in writing by the Commissioner or the Commissioner's duly authorized representative, Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, gasoline or similar flammable 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. Licensee's Farmer-vendors are permitted to use fuels approved by Parks

and other agencies having jurisdiction to warm or chill food or to keep themselves warm as necessary, provided all appropriate safety measures are taken. Parks shall cooperate with and assist the Licensee in all reasonable respects in Licensee's attempt to obtain on behalf of itself and/or Farmer-vendors an agreement for use of electricity at certain locations within the Licensed Premises. Such electrical costs shall be paid by the Licensee.

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

8.7 At Parks' request, Licensee shall conduct site inspections at the Licensed Premises with a Parks representative. Such inspections shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee. Licensee shall promptly make all necessary repairs.

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

8.9 At its sole cost and expense, Licensee shall keep its vehicles, equipment, tents and other installations in reasonably good condition and shall remove any and all graffiti that may appear on such installations on the Licensed Premises during the Term hereof. Such graffiti removal shall be commenced within a reasonable time after the appearance of any such graffiti and shall continue until such graffiti is removed.

8.10 Licensee shall cooperate with Parks to address any pest control issues at the Licensed Premises. 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 to limit the environmental impact of its pesticide use.

8.11 Licensee shall ensure Farmer-vendors make reasonable efforts to:

- (a) provide only non-plastic straws, take-out utensils and cups that are biodegradable and made from cornstarch, and take-out packaging that is 100% recyclable;
- (b) use only recycled paper products, such as paper towels and napkins, and "Green Seal" eco-friendly cleaning supplies and soaps;
- (c) end the use of plastic bags in its retail operations;
- (d) end the sale of plastic bottles; and
- (e) implement a comprehensive recycling program to minimize the amount of recyclable waste headed to landfills

The Licensee shall ensure Farmer-vendors, at their sole cost and expense, hold consideration to the following throughout the Licensed Premises.

Environmental Considerations:

(i) Licensee shall ensure all Farmer-vendors use green seal eco-friendly products throughout the Licensed Premises. Licensee will recycle all cans, bottles, and glassware, and will train all staff in environmentally friendly food service practices.

(b) Energy Consumption and Paper Waste

(i) Licensee shall ensure Farmer-vendors turn off equipment when it is not being used.

(ii) Licensee shall ensure all Farmer-vendors utilize eco-friendly cleaning supplies including eco-friendly, paper towels, cleaning soaps and compostable trash can liners.

(iii) Licensee shall ensure all Farmer-vendors continue to reduce single use plastics and offer paper straws. Licensee shall seek to eliminate more single use plastics over time.

9. APPROVALS

9.1 Licensee shall obtain, and is solely responsible for obtaining, all government approvals, permits and licenses required by federal, State and City laws, regulations, rules and orders to use the Licensed Premises in accordance with the terms of this License. Parks shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits and licenses.

9.2 Whenever any act, consent, approval or permission is required of the City, Parks or Commissioner under this License, the same shall, in each instance, be valid only if it is in writing and signed by Commissioner or her duly authorized representative; provided that, in each case, such act, consent, approval, or permission shall not be unreasonably withheld or delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or her duly authorized representative.

10. RESERVATION FOR SPECIAL EVENTS

10.1 For the purposes of this Article 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, unanticipated events and emergencies at the Licensed Premises. 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 Article 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.

10.2 Parks, acting on behalf of the City, reserves the right to host a number of annual events, without cost to Parks (except as explicitly set forth herein), 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.

11. PROHIBITION AGAINST TRANSFER, ASSIGNMENTS AND SUBLICENSES

11.1 (a) Except as permitted by Section 7.6, 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.

(b) 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 he deems necessary and Licensee shall promptly comply with such requests.

(c) The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

11.2 Except as permitted by 7.6, no assignment or other transfer of any interest in this License Agreement shall be permitted without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

11.3 No consent to or approval of any assignment or sublicense granted pursuant to this Article 11 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.

12. PARKS CONSTRUCTION

12.1 (a) Parks reserves the right to perform safety construction or maintenance work deemed necessary by Commissioner in the Commissioner's sole discretion on or throughout the Licensed Premises at any time during the Term of this License. Licensee agrees to cooperate with Parks, to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use reasonable efforts to give Licensee at least thirty (30) days' prior written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner.

(b) 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 of Licensee.

13. FIXED AND EXPENDABLE EQUIPMENT

13.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, acquire, provide, replace, or repair, install or affix, 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. Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and Additional Fixed Equipment in good operating condition, normal wear and tear excepted.

13.2 At its option, the City has title to all Fixed Equipment on the Licensed Premises as of the date of the 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 City at 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 it shall be the responsibility of Licensee to remove such items at its sole cost and expense after the termination or expiration of this License. Licensee may not acquire and affix any Additional Fixed Equipment prior to the permitting procedures delineated in Article 13. Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks in a condition as good as or better than at the commencement of this License Agreement.

13.3 Licensee shall have the use of any Fixed Equipment located within the Licensed Premises. Licensee must acquire and use for the purpose intended any Additional Fixed Equipment which the Commissioner reasonably determines is necessary to the operation of this License.

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

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

13.6 The equipment to be removed by Licensee pursuant to this Section shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises, ordinary wear and tear excepted. Notwithstanding its vacating and surrendering of the Licensed Premises, Licensee shall remain liable to Parks for any damage it may have caused to the Licensed Premises.

14. EQUIPMENT AND CONDITION UPON SURRENDER

14.1 During periods of occupancy of the Licensed Premises, Licensee, at its sole cost and expense and to the satisfaction of the Commissioner, shall keep and preserve in good order the Licensed Premises, which shall include pathways (paved and unpaved), adjacent areas, and Fixed and Additional Fixed Equipment. Licensee, after each day of operation at the Licensed Premises and upon the conclusion of its final day of occupancy, shall clean the Licensed Premises, so that this area is reasonably free of litter, garbage, and refuse, and is reasonably clean, neat and orderly.

14.2 Notwithstanding the foregoing, at the expiration or sooner termination of this License, Licensee shall surrender the Licensed Premises, and the Fixed and Additional Fixed Equipment to which City holds title.

14.3 Licensee acknowledges that it is acquiring this license to use the Licensed Premises and Fixed Equipment thereon solely on reliance on its own investigation, and that no representations, warranties or statements have been made by Parks 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."

15. COMPLIANCE WITH LAWS

15.1 Licensee shall comply and shall require its employees and agents as well as the Farmer-vendors to comply with all applicable laws, rules, regulations, permits, licenses, approvals, orders and decisions prescribed by Commissioner, and to comply with all applicable laws, rules, regulations, permits, licenses, approvals, orders and decision (including any environmental, health and/or safety-related laws, rules, regulations, permits, licenses, approvals, orders and decisions) of any City, State or federal agency or governmental entity having jurisdiction over operations of this

License and the Licensed Premises and/or Licensee's use and occupation thereof. Such laws, rules, regulations, permits, licenses, approvals, orders and decisions may be amended from time to time during the Term of this License. Licensee shall enforce the Greenmarket Rules with respect to the Farmer-vendors operating at the Licensed Premises.

15.2 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.

16. NON-DISCRIMINATION

16.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, applicant for spaces or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. With respect to all decisions involving award or assignment of Spaces, Licensee shall not unlawfully discriminate against any applicant for Spaces because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

16.2 Licensee shall comply with the Americans with Disabilities Act ("ADA") and regulations pertaining hereto as applicable. Any violation of this Section shall be a material breach of this License.

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

17. NO WAIVER OF RIGHTS

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

18. INDEMNIFICATION

18.1 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 Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

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

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

19. WAIVER OF COMPENSATION

19.1 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. Licensee hereby expressly releases and discharges Commissioner, her agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

19.2 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 or revoked 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.

20. INSURANCE

20.1 Licensee's Obligation to Insure

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

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

20.2 Commercial General Liability Insurance

(a) Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) 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 Three Million Dollars (\$3,000,000). 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 0001, shall contain no exclusions other than as required by law, as routinely and appropriately used for farmer's markets, 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 Additional Insureds for claims that may arise from any of the operations under this Agreement. Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026 and CG 20 37, and the limits for the City shall be no lower than Licensee's. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

20.4 Commercial Automobile Liability Insurance With regard to all operations under this License, 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) Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering any buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”) owned by Parks, 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 21.5 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, 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 Liquor Law Liability Insurance

Licensee is strictly prohibited from serving alcohol on the Premises. In the event that any sublicensee or contractor shall serve alcohol on the Premises, the Licensee shall cause such sublicensee or contractor to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, 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. Such liquor law liability insurance shall comply with all requirements of this Article, including the Proof of Insurance requirements. Licensee shall be responsible for enforcing these requirements with respect to sublicensees and contractors, and for submitting the required documentation to Parks and/or the City as set forth in this Article.

20.7 Hazardous Materials and Pollution Liability Insurance

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.

21.8 (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, 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 Licensee under all primary, excess and umbrella policies covering operations under this License Agreement.

(f) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(g) 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, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. 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.

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

20.9 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 execution of this License Agreement.

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

- (i) C-105.2 Certificate of Worker's Compensation Insurance;
- (ii) U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
- (iii) Request for WC/DB Exemption (Form CE-200);
- (iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or
- (v) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "**Certification by Insurance Broker or Agent**" in the form required by the Commissioner, attached hereto as Exhibit C, or certified copies of all policies referenced in such Certificate of Insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this 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) Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

20.10 Miscellaneous

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

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

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

(d) Licensee's failure to secure and maintain insurance in 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 Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

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

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

(g) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, Licensee waives all rights against the City, including their 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 Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(h) Licensee shall require any Farmer-vendor, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and require such entity to name both

the City and Licensee as additional insureds under such insurance. The City's coverage thereunder shall be at least as broad as the Licensee's.

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

21. INVESTIGATIONS

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

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

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

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

(2) 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 21.1(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 21.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 21.1(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)(1) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

- (e) (i) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- (ii) The term “person” as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- (iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.
- (iv) The term “member” as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- (f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

22. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

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

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

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

22.3 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.

22.4 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.

22.5 If any provision(s) of this Article 22 are held unenforceable for any reason, each and every other provision(s) of Article 22 shall nevertheless remain in full force and effect.

23. WAIVER OF TRIAL BY JURY

23.1 (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 the City may reasonably require of Licensee.

24. CUMULATIVE REMEDIES — NO WAIVER

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

25. EMPLOYEES

25.1 All experts, consultants, independent contractors, specialists, trainees, employees, servants, and agents of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions,

liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

25.2 As a Licensee of the City, the Licensee must comply with the Earned Safe and Sick Time Act, also known as the Paid Safe and Sick Leave Agreement Rider, attached as **Exhibit D**.

26. INDEPENDENT STATUS OF LICENSEE

26.1 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, agents or employees 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.

27. CREDITOR-DEBTOR PROCEEDINGS

27.1 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.

28. CONFLICT OF INTEREST

28.1 Licensee represents and warrants that neither it nor to its knowledge any of its directors, officers, members, partners or employees, has any interest nor shall knowingly permit them to 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 knowingly employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

29. PROCUREMENT OF AGREEMENT

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

warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

29.2 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, if any, paid hereunder 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 for by law or pursuant to this License.

30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

31. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

31.1 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.

32. JUDICIAL INTERPRETATION

32.1 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.

33. MODIFICATION OF AGREEMENT

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

34. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

35. NOTICES

35.1 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 at its respective address provided at the beginning of this License Agreement or to the attention of Licensee at GrowNYC PO Box 2327, New York, NY 10272, or to any other address that Licensee shall have filed with Commissioner. In addition to the aforementioned requirements in this Article 35, notices may also be given by electronic mail to the electronic mail addresses of each party set forth below in this Section.

To Parks:

City of New York Department of Parks & Recreation
Revenue Division
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10065
revenue@parks.nyc.gov

To GrowNYC:

GrowNYC
President/CEO
PO Box 2327
New York, NY 10272
ceo@grownyc.org

36. LICENSEE ORGANIZATION, POWER AND AUTHORITY

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

37. ELECTRIC UTILITIES

37.1 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 electric utility service or create a new electric utility system, as needed, and obtain the appropriate permits and approvals at the Licensed Premises at Union Square Market. This includes establishing a dedicated meter and/or submeter that captures electric utility usage on the Licensed Premises at Union Square Market and an account with the appropriate service providers. Licensee will be required to pay for any and all electric utility costs connected with the operation of the Licensed Premises at Union Square Market, and to the extent Licensee connects to an electric utility system at other Licensed Premises, during the Term.

38. MISCELLANEOUS

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

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.

* * *

[Signature page to follow]

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

CITY OF NEW YORK,
INC.
DEPARTMENT OF PARKS & RECREATION

COUNCIL ON THE ENVIRONMENT,
DBA GROWN NYC

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

Dated: _____, 2024

Dated: _____, 2024

Approved as to Form:
Certified as to Legal Authority

Acting Corporation Counsel

EXHIBIT A

GrowNYC Greenmarket Permit Locations, Days and Hours of Operation

Licensee agrees to work with Parks in good faith to pilot new Greenmarket and/or Farmstand locations.

BRONX (3)

Joyce Kilmer Park (CDBG)¹

Tuesdays, 6AM to 7PM

Located along the east side of Joyce Kilmer Park, the west side of Grand Concourse, between 161st and 163rd Streets. Includes curbside parking on the Grand Concourse service road. Farmer-vendor vehicles limited to twelve (12).

Poe Park (CDBG)

Tuesdays, 6AM to 5PM

Located on the south side of Poe Park, 192nd Street closed to traffic between Grand Concourse and Valentine. Parking permits for Farmer-vendors issued by The Mayor's Street Activity Permit Office (SAPO).

Virginia Park (CDBG)

Fridays, 6AM to 7PM

Located on the south side of Virginia Park, along Westchester Avenue between the Bronx Expressway Access Road and White Plains Road, Bronx. Includes parking along Westchester Avenue. Farmer-vendor vehicles limited to twelve (12).

BROOKLYN (10)

Bartel-Pritchard

Wednesdays, 6AM to 7PM

Inside Bartel-Pritchard Square, Prospect Park west at 15 street, inside entrance to park on West Drive Includes parking for Farmer-vendors. Farmer-vendor vehicles limited to twelve (12). Parks reserves the right to determine parking restrictions. During Parks approved Special events, the greenmarket may relocate operations to Prospect Park Southwest, Bartel-Pritchard Circle

Sundays, 6 AM to 7PM

Inside Bartel-Pritchard Square, Prospect Park west at 15 street, inside entrance to park on West Drive Includes parking for Farmer-vendors. Farmer-vendor vehicles limited to twelve (12). Parks reserves the right to determine parking restrictions. During Parks approved Special events, the greenmarket may relocate operations to Prospect Park Southwest, Bartel-Pritchard Circle

¹ Locations marked “(CDBG)” are locations in or adjacent to a Community Development Block Grant (CDBG) eligible neighborhood as determined by the U.S. Department of Housing and Urban Development (“HUD”) as of May 14, 2014.

Columbus Park

Tuesdays, Thursdays, and Saturdays, [5AM] to 7PM

Located at Columbus Park on the Plaza between Borough Hall and Johnson Street. Farmer-vendor vehicles limited to fifteen (15).

Fort Greene

Saturdays, 6AM to 7PM

Located on the east side of Fort Greene Park , between DeKalb and Myrtle Avenues. Includes curbside parking. Farmer-vendor vehicles limited to seventeen (17).

Grand Army Plaza

Saturdays, [5AM] to 7PM

Located in Grand Army Plaza and the Soldiers and Sailors Memorial Arch includes parking. Farmer-vendor vehicles limited to thirty-five (35).

McCarren Park (CDBG)

Saturdays, 6AM to 7PM

Located on Union Avenue between N12 and Driggs Avenue Street closed to traffic between North12th and Driggs Avenue. Parking permits for Farmer-vendors issued by The Mayor’s Street Activity Permit Office (SAPO).

Milestone Park (CDBG)

Sundays, 6AM to 7PM

Located on 18th Avenue (or Cristoforo Columbo Boulevard) between 81st and 82nd Streets. Includes parking for Farmer-vendors. Farmer-vendor vehicles limited to fourteen (14).

Sunset Park (CBDG)

Saturdays 6AM to 5PM

Located along Sunset Park 7 avenue between 42nd and 44th Streets. Includes parking for Farmer-vendors. Farmer-vendor vehicles limited to fifteen (15).

MANHATTAN (11)**Abingdon Square**

Saturdays, 6AM to 7PM

Located on the east and west borders of Abingdon Square Park (Hudson & 8th Avenue). Includes curbside parking. Farmer-vendor vehicles limited to fourteen (14).

Bowling Green Park

Thursdays, 6AM to 7PM

Located alongside and on the Plaza between Bowling Green Park and the American Indian Museum (or former Customs’ House), includes parking. Farmer-vendor booths limited to thirteen (13), Farmer-vendor vehicles limited to six (6).

Tuesdays, 6AM to 7PM

Located alongside and on the Plaza between Bowling Green Park and Museum, includes parking. Farmer-vendor booths limited to thirteen (13), Farmer-vendor vehicles limited to six (6). Parking on Broadway alongside Park.

City Hall Park

Tuesdays & Fridays, 6AM to 7PM

Located on the east side of Broadway between Chambers and Murray Streets. Unless approved otherwise, Farmer-vendor parking restricted to the east side of West Broadway, between Barclay Street and Park Place.

Dag Hammar skjold Plaza

Wednesday, 6AM to 7PM

Located on the north side of Dag Hammar skjold Plaza between 1st and 2nd avenues, includes curbside parking. Farmer-vendor vehicles limited to fifteen (15).

Inwood Hill/Isham Park (CDBG)

Saturdays, 6AM to 7PM

Located at Inwood Hill Park/Isham Park, on Isham Street between Seaman Avenue and Cooper Street. Parking permits for Farmer-vendors issued by The Mayor's Street Activity Permit Office (SAPO).

Richard Tucker Square

Saturdays, 6AM to 7PM

Located at Richard Tucker Square Park. Farmer-vendors limited to sixteen (16). Includes Farmer-vendor parking along Broadway on the west side of Square. Farmer-vendor vehicles limited to seven (7).

Thursdays, 6AM to 7PM

Located at Richard Tucker Square Park. Farmer-vendors limited to sixteen (16). Includes Farmer-vendor parking along Broadway on the west side of Square. Farmer-vendor vehicles limited to seven (7).

Saint Mark's Square

Tuesdays, 6AM to 7PM

Located in Saint Mark's Square and around the plaza on 2nd Avenue and 10th Street, includes curbside parking on 10th street and parking on the Plaza on Tuesdays. Includes parking for Farmer-vendors. Farmer-vendor vehicles limited to ten (10).

Theodore Roosevelt Park

Sundays, 6AM to 7PM

Located along the east side of Columbus Avenue, between West 77th and 81st Streets. *Farmer-vendor parking included* along Columbus Avenue between West 77th and West 81st Streets. *Parking restrictions may be subject to change.* Farmer-vendor vehicles limited to fourteen (14). Parks will relocate Green Market operations during seasonal Arts and Crafts Fairs at Theodore Roosevelt Park. Between November 24th and December 27th, or dates otherwise approved by Parks, Green Market operations are limited to West 77th and 79th Streets.

Tompkins Square (CDBG)

Sundays, 6AM to 7PM

Located on the west side of Tompkins Square Park, between 7th Street and 9th st. Market wraps around corner onto south side of park on 7th street; includes curbside parking. Farmer-vendor vehicles limited to fourteen (14).

Union Square Park

Mondays, [5AM] to 8PM

Located at Union Square Park, in the plaza on the north side of the park and the west side of the park south to 15th Street; includes parking. Farmer-vendor parking available along 17th Street between Park Avenue and Union Square West; Park Avenue on North Plaza between 16th and 17th Streets; and Union Square West between 15th and 17th Streets. Farmer-vendor vehicles limited to sixty (60).

Fridays, [5AM] to 8PM

Located at Union Square Park, in the plaza on the north side of the park and the west side of the park south to 15th Street; includes parking. Farmer-vendor parking available along 17th Street between Park Avenue and Union Square West; Park Avenue on North Plaza between 16th and 17th Streets; and Union Square West between 15th and 17th Streets. Farmer-vendor vehicles limited to sixty (60).

Wednesdays, [5AM] to 8PM

Located at Union Square Park, in the plaza on the north side of the park and the west side of the park south to 15th Street; includes parking. Farmer-vendor parking available along 17th Street between Park Avenue and Union Square West; Park Avenue on North Plaza between 16th and 17th Streets; and Union Square West between 15th and 17th Streets. Farmer-vendor vehicles limited to eighty (80).

Saturdays, [5AM] to 8PM

Located at Union Square Park, in the plaza on the north side of the park with additional 30 feet of space south of 16 street on east side (Park Avenue) and the west side of the park south to 15th Street; includes parking. Farmer-vendor parking available along 17th Street between Park Avenue and Union Square West; Park Avenue on North Plaza between 16th and 17th Streets; and Union Square West between 15th and 17th Streets. Farmer-vendor vehicles limited to ninety (90).

Licensee may extend Market and Farmer-vendor parking below East 15th Street, except during the holiday market.

Washington Market Park

Wednesdays & Saturdays, 6AM to 7PM

Located on the west side of Greenwich Street along Washington Market Park between Duane and Chambers street. Includes Parking, Farmer-vendor vehicles limited to twenty-one (21). Between November 24 and December 27th, or dates otherwise approved by Parks, Green Market operations are limited to Greenwich Street between Duane and Reade Streets.

During this period, with Parks written approval, market operations may extend to Chambers Street.

MANHATTAN PENDING/PROPOSED MARKET SITE(S):

1. **Thomas Jefferson Park (CDBG):** Proposed site is between East 111th and 112th Streets, in front of Recreation Center. Day(s) of week: TBD. Number of farmers TBD. Farmer-vendor vehicle parking TBD.
2. **Montefiore Square:** Broadway, Hamilton Pl., W. 138 St. Day(s) of the week: TBD. Need Farmer-Vendor vehicle parking.

QUEENS (3)

Lou Lodati Playground

Saturdays, 6AM to 7PM

Located on the southside of the park and northside of Skillman Avenue between 41st and 43rd streets. Includes parking for Farmer-vendor vehicles. Parks may decide parking restrictions and limits to Farmer-vendor vehicles.

Bowne Playground

Wednesdays, 6AM to 6PM

Located at Sanford Avenue along Bowne Playground. Includes parking for Farmer-vendor vehicles

Maple Playground

Wednesdays, 6AM to 6PM

Located on Kissena Blvd along Maple Playground. Includes parking for Farmer-vendor vehicles

QUEENS PENDING/PROPOSED MARKET SITE(S):

- **Athens Park:** Proposed market site along 30th Avenue. If approved by Parks, market may continue along 30th Street. Maximum of ten (10) Farmer-vendor booths may be in operation. Proposed Day(s) of week is Sunday. Farmer-vendor vehicular parking TBD.

FARMSTAND LOCATIONS

Bronx

McKinley Square

Wednesdays, 9 AM to 4 PM

Located on 169th St & Boston Rd at McKinley Square. Parking at McKinley Square.

Aqueduct Walk

Wednesdays, 7 AM to 6 PM

Located at University Avenue and W Burnside Ave (NE corner). Parking curbside.

Manhattan

Little Flower Park Playground

Fridays, 7 AM to 4 PM

Located at Madison St. between Clinton and Jefferson Streets. No parking.

Queens

Clemens Triangle/Ridgewood Veterans Triangle

Saturdays, 7AM to 4 PM

Located at Cypress Avenue, between Myrtle and Putnam Avenues. Parking on Cypress Avenue.

Forest Park

Saturdays, 7 AM to 4 PM

Located at Park Lane South and Myrtle Avenue. Parking at Forest Park.

Brooklyn

Zion Triangle

Saturdays, 7:30 AM to 4:30 PM

Located at Pitkin Avenue and Legion Street. Parking on Pitkin Avenue

Additional Operational Requirements:

- Licensee shall submit to Parks a written schedule of operational procedures at Union Square. This may include, but is not limited to, supervision of Farmer-vendor garbage removal, repairs, or pressure washing of Licensed Premises.
- Farmer-Vendor booths, stands and vehicles must not obstruct thoroughfares throughout parks. This includes, but is not limited to, pedestrian pathways, benches, and, in the case of Union Square Park, general seating areas in front of the Union Square Pavilion and the Mother and Child Fountain.
- It is the responsibility of Licensee to monitor and correct improper parking of Farmer-vendor vehicles.
- It is the responsibility of Licensee to ensure emergency, law enforcement and Parks' related vehicles safely access the parks.
- Farmer-vendors must not erect barriers adjacent to booths that impede pedestrian passage to curb, pathways, streets, stairs, subway or permanent facilities.

Expansion of Permit Locations and Days & Times:

- Upon prior written consent of Parks, Licensee shall have the right to amend **Exhibit A** to include additional permit locations (with days and hours of operation to be approved by Parks) and to expand the permitted footprint of locations in **Exhibit A** as space becomes available. With Parks' written approval, Licensee shall be permitted to change certain market schedules (i.e., days & times). Parks will use its best efforts to notify Licensee within ten (10) days if Parks determines a change is required in the market schedule.

Addition of Permitted Locations

- Licensee shall cooperate with Parks in good faith to pilot new locations on Parkland, with the goal of adding successful locations, in Licensee's reasonable determination, as Permitted Locations on **Exhibit A**. In the event both parties agree to add a piloted location to **Exhibit A**, the parties will negotiate in a good faith manner the permitted footprint, days and hours of operation, etc. of such site prior to its inclusion on **Exhibit A**.

EXHIBIT B

2024 – 2025 Greenmarket Rules and Agreement

EXHIBIT C
Certification by Insurance Broker or Agent

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 D

EARNED SAFE AND SICK LEAVE LAW CONCESSION AGREEMENT 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. Licensees 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 Licensee 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 Licensee 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 Licensee must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Licensee 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, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee 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 Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

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

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for

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

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.

GREENMARKET RULES

April 1, 2024-March 31, 2025

The GrowNYC/Council on the Environment Inc./Greenmarket Agreement (the “Agreement”), the Greenmarket Rules and all other materials contained in the Application Package are collectively defined as the Greenmarket Regulations (the “Regulations.”)

Read the Regulations carefully before signing the Agreement and keep this copy for your records. Failure to comply with the Regulations may result in reduction, suspension, or termination of market assignments or termination from Greenmarket.

If you need clarification or interpretation of the Regulations, please consult with the Greenmarket Director at (212-788-7476) before you sign the Agreement. Please be advised, however, that the Regulations will govern (not any discussion, email, or other communications with any Greenmarket Personnel).

Introduction

Greenmarket, a program of Council on the Environment Inc., D/B/A GrowNYC, operates farmers markets in the city's five boroughs.

Our Regulations make Greenmarkets unique for Farmers and other food producers *and* for New Yorkers who wish to buy home-grown, local foods. Furthermore, Greenmarket is a public service. Many markets are located on public property, often on sites where other commercial activity is limited. Greenmarket operates on these sites in part because our farmers markets are for Regional Farmers and other regional food producers to sell local farm products.

All capitalized terms are defined in Appendix A - "*Definitions*" herein.

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Appendices

Appendix A: Definitions

Appendix B: Map of the Region

Appendix C: Some Numbers and Addresses of NYC and NYS Agencies

Appendix D: List of Certification and Approved Certifying Agencies

Appendix E: Preparing for a Greenmarket Inspection

Appendix F: Weights and Tie Down Requirements

PART I: MISSION

A. GREENMARKET MISSION STATEMENT

Greenmarket's mission is to promote Regional agriculture and ensure a continuing supply of fresh local produce for New Yorkers. Greenmarket supports Farmers and preserves farmland for the future by providing regional, small family Farmers with opportunities to sell their fruits, vegetables, and other farm products to New Yorkers.

B. FCAC MISSION STATEMENT

The Farmer and Community Advisory Committee ("FCAC") provides a forum for ideas; peer review in the enforcement of Greenmarket Regulations and a hearing place for Producer grievances; and guidance and assistance to the Greenmarket Program, Greenmarket Producers and the Greenmarket communities in implementing the Greenmarket mission.

PART II: ADMISSION CRITERIA

A. PRODUCER-ONLY: REGIONAL PRODUCERS

Regional Producers only are eligible to be considered for participation at Greenmarket.

B. REGION

1. The Region is defined by a circle, extending 120 miles to the south, 170 miles east and west, and 250 miles north of New York City (see map in Appendix B).
2. Producers from outside the Region are not eligible to participate in Greenmarket. The restriction to the Region does not apply to Producers who attended Greenmarket prior to 1998 and who have continuously attended each year since and including the 2005-06 Market Year.
3. Ocean Fishers must dock within the Region and catch fish from Mid-Atlantic waters.

C. FULL APPLICATION

Applicants wishing to participate in Greenmarket must submit a complete application for admission consideration.

D. ELIGIBLE PRODUCERS

1. Producers may only apply as:
 - a) A sole proprietorship, partnership, limited liability company, or corporation;
 - b) 'Full Production Partnerships' of two individual Farmers;
 - c) Not-for-profit organizations that are actively engaged in agriculture and/or food production; or
 - d) A Worker Cooperative.
2. Producers must submit documents substantiating their status for review by the Director. Review by the FCAC may be requested.
3. Producers must promptly notify Greenmarket of any significant changes to their compliance with the admission criteria pursuant to this Part II, including but not limited to, changes in ownership or management, farm location, and products produced. Greenmarket reserves the right to review or reconsider a Producer's eligibility for participation at Greenmarket based on any such changes.
4. A Producer's principal may not represent more than one farm or Producer within Greenmarket, except, however, that this rule does not apply to a Producer's principal who solely sells alcoholic beverages as a secondary Producer at Greenmarket.

E. PRODUCER OR OTHER REPRESENTATIVE ATTENDANCE AT MARKET

1. **Representatives at Market.** Greenmarket encourages regular attendance of the Producer at market. If the Producer is not at market, then a Producer Representative must be present who is knowledgeable and able to answer questions about the products and aspects of production.
2. **Producers at Market.** The Producer or an individual significantly involved in production must spend at least one full day at each market site every month. If this requirement cannot be met due to hardship, the Producer must submit a written request in advance that another individual employed by the Producer attend market on a temporary basis. The Director shall approve or disapprove such substitution in writing. Review by the FCAC may be requested.

F. LAND AND PLACES OF PRODUCTION

1. Land

- a) All land used for production of Eligible Products sold at market must be within the Region.
- b) Producers must own or lease the land they use for production.
- c) Producers that lease the land used for production are encouraged to secure written long-term lease agreements, containing provisions that are beneficial to the Producer, and that provide protection for the Producer's improvements.
- d) Producers may sell crops they grow as per Greenmarket Rules on land they lease, provided that:
 - (1) Leased land is within the Region;
 - (2) Another grower is not actively farming the land the Producer rents;
 - (3) The Producer meets a required period of cultivation:
 - (a) Annual crops. Leased land must be fallow at inception of lease;
 - (b) Orchard and Vineyard crops. Leased land must be either planted by the Producer or under the Producer's full control of production for two (2) full growing seasons before the Producer may bring the crops to market.
 - (c) Perennial crops other than orchard and vineyard crops. Leased land must be either planted by the Producer or under the Producer's full control of production for one full growing season before the Producer may bring the crops to market.

2. Facilities and Other Places of Production

- a) All facilities used for production, processing, and storage must be within the Region.
 - (1) **Exception:** Where off-farm processing is expressly permitted by these Regulations, the facilities may be located outside of the Region. Approval by the Director is required; review by the FCAC may be requested.
- b) Producers must own or lease facilities they use for production and storage, and own or lease facilities used for processing, except where waived by these Regulations.
- c) In the case of leased facilities:
 - (1) Producers that lease the facilities are encouraged to secure written long-term lease agreements, containing written provisions that are beneficial to the Producer, and that provide protection for the Producer's improvements.
 - (2) Hourly, or short-term, leases of processing facilities are permitted.
 - (3) Producers must submit leases or written agreements for use of facilities to the Director prior to use.

G. COMPLIANCE WITH LAW

1. **General.** Producers are responsible for complying with all applicable Laws, including, without limitation, the laws and regulations of the NYC Department of Health and Mental Hygiene, the NYS Department of Agriculture and Markets, the US Food and Drug Administration (FDA), and the United States Department of Agriculture, and Human Rights and Labor laws.
2. **Department of Finance Registrations.** Producers must file all necessary tax forms, including but not limited to those required by the New York City and the New York State Departments of Finance.
3. **Taxable Edibles and Non-edibles.** Producers selling taxable edible and non-edible products, including wine and plant materials, must register with New York State Sales Tax Registration and display the registration number at market.
4. **Scale Registration and Seals.** Scales must be registered as legal for trade in New York City and sealed by the New York City Department of Consumer Affairs (See Appendix C for contact information for select NYS and NYC agencies).

5. **Credit/Debit Surcharges.** In compliance with New York State Law, Greenmarket prohibits Producers from imposing a credit card surcharge at the point of sale. Producers are, however, permitted at the point of sale to offer a cash discount on the advertised price for the product. Producers may also charge a debit card surcharge at the point of sale, so long as the Producer displays a clear and prominent sign at their Selling Area informing customers of such surcharge. A Producer's failure to adhere to this policy may result in a Fine of \$50 per day of infraction under Part VI.B.1 - "*Fines.*"
6. **Alcohol Signage.** Producers selling alcoholic beverages pursuant to Part III.F.3.b - "*Alcoholic Beverages*" must display all signage required by Law. In compliance with the New York State Liquor Authority, such sign or poster must be prominently displayed and include the following text:

"No person shall sell or give away any alcoholic beverages to: 1) any person under the age of twenty-one years; or 2) any visibly intoxicated person. IT IS A VIOLATION PUNISHABLE UNDER LAW FOR ANY PERSON UNDER THE AGE OF TWENTY-ONE TO PRESENT ANY WRITTEN EVIDENCE OF AGE WHICH IS FALSE, FRAUDULENT OR NOT ACTUALLY HIS OWN FOR THE PURPOSE OF ATTEMPTING TO PURCHASE ANY ALCOHOLIC BEVERAGE."

In compliance with the New York State Liquor Authority, such sign or poster shall be captioned with the word "WARNING" in at least two-inch lettering. The signage must be in an upright position and in a conspicuous place, fully visible to customers. A Producer's failure to adhere to this policy may result in a Fine of \$50 per day of infraction under Part VI.B.1 - "*Fines,*" and, under New York State Law, may be subject to a civic penalty of up to \$100 per day of violation.

H. ADMISSION ON PROBATION

1. A probationary period of admission shall apply to Producers that have:
 - a) Not attended Greenmarkets within the previous calendar year;
 - b) Changed primary farm location/primary production facility; and/or
 - c) Been suspended from Greenmarket in the current or previous Market Year.
2. The probationary period is for one calendar year, beginning with the first day of market attendance at market.
3. If a Producer is found in Violation of the Regulations while on probation, such Violation may result in immediate suspension or termination from markets.
4. Producers admitted for a probationary period shall be inspected by Greenmarket Personnel prior to attending market. A \$200 inspection fee shall be charged to the Producer (see Part V.C - "*Inspections.*")

I. COMPLIANCE WITH GREENMARKET REGULATIONS

1. **General.** Producers shall comply with the Regulations and the instructions of the Greenmarket Personnel. The Director shall enforce the Regulations as set forth in Part VI - "*Penalties.*"
2. **Grievance Procedures.** A Producer who wishes to lodge a formal complaint with regard to another Producer, Greenmarket Personnel, or a Greenmarket Personnel decision, should file such complaint in writing with the FCAC Chair and the Greenmarket Director. If the complaint is about either the FCAC Chair or the Greenmarket Director, then such complaint should be filed in writing with the GrowNYC President with a copy to the GrowNYC Assistant Director. If the complaint is about either of the GrowNYC President or GrowNYC Assistant Director, then such complaint should be filed in writing with the Chairperson of GrowNYC.
 - a) The recipient of the complaint shall have the responsibility of promptly acknowledging receipt of the complaint by written notice to the Producer who filed the complaint.
 - b) Thereafter, the complaint will be responded to either in a written response to the Producer or through a face-to-face or video conference meeting – the method to be selected by the person with whom the complaint was filed.
 - c) GrowNYC's Office Manager shall keep a file of all complaints that are filed and the responses.

J. CODE OF CONDUCT

1. **Statement of Purpose.** GrowNYC is committed to providing safe and welcoming markets. We stand firmly against all kinds of hateful speech and behavior and firmly behind our employees, partners, Producers, community members, and other stakeholders, all of whom deserve to be treated with respect and dignity.
2. **Ineligibility.** Producers may be ineligible to participate in Greenmarket if, in the determination of Greenmarket Personnel, their behavior, whether at market or otherwise, would compromise the mission of or bring discredit upon Greenmarket (see also IV.B - "*Conduct at Market.*")
3. **Inappropriate Behavior.** Behavior which may make a Producer ineligible to participate in Greenmarket includes, but is not limited to:
 - Intimidating, harassing, abusive, discriminatory, derogatory, or demeaning speech, materials, or conduct, particularly those related to sex, gender, sexual orientation, race, ability, age, cultural background, education, ethnicity, immigration status, language, nationality, national origin, physical appearance, economic status, or religion,
 - Violence, threats of violence, or violent language or symbols directed against another person and/or
 - Lewd or offensive behavior or language, including but not limited to using sexually explicit or offensive language, materials or conduct, or any language, behavior, or content that contains profanity, obscene gestures, or racial, religious, or ethnic slurs.

PART III: ELIGIBLE PRODUCTS

A. GENERAL

1. All items displayed for sale at market must be produced in accordance with Part II “*Admission Criteria*” and Part III “*Eligible Products*” of these Regulations. Products and practices not specifically listed in the Regulations must be approved by the Director prior to sale at market. In such case, Producers must submit a description of any such product or practice in writing to the Director for approval. For products and practices which substantially depart from those currently permitted, a review by the FCAC may be requested before approval is granted.
2. Producers must be in full control of the production of all products sold at market, except where waived by the Regulations.
3. Producers must sell only those products listed on the “Product Listing,” they submitted as part of their yearly application package. Greenmarket Personnel may remove products not listed on the Product Listing for such Producer. To amend the Product Listing, Producers must submit a written request to amend their Product Listing to the Director for approval. Processing such requests may take up to 15 business days.
4. The Producer’s market assignment entitles them to sell products, as per the Regulations, only in their assigned space. All promotional or educational activities not specifically mentioned in the Regulations, that the Producer wishes to conduct in either a Producer’s Selling Area or in the market’s public space, must be approved in advance by the Director.

B. PRODUCT INTEGRITY

1. **Produce.**
 - a) **No Genetically Modified Produce.** Producers may not sell genetically modified produce. This prohibition includes produce grown from any plant material that is the product of cell fusion, recombinant DNA technology, or other similar technology. This prohibition excludes exclusively traditional methods, such as breeding or tissue culture.
 - b) **No Irradiated Produce.** Producers may not sell irradiated produce.
2. **No Cloned Animal Products.** Producers may not sell animal products, including but not limited to meat, poultry and fowl, dairy, and eggs, that are the product of cloned animals.
3. **Prohibited Ingredients.**

Statement of Intent. The intent of Greenmarket is to eliminate ingredients from Value Added Food Products sold at market that are not good for human health and do not support the Greenmarket mission.

 - a) Producers may not use these ingredients (or compound ingredients that include these ingredients) in the preparation of Value-Added Food Products sold at Greenmarket, each as defined by the FDA:
 - (1) Artificial Transfats.
 - (2) Artificial Colors including, but not limited to, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, Orange B, FD&C Red No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6.
 - (3) Artificial High Intensity Sweeteners, including, but not limited to, Neotame (brand name Newtame), Saccharin (brand names include Sweet’N Low), Aspartame (brand names include Equal), Acesulfame potassium / Ace-K (brand names include Sweet One), and Sucralose (brand name Splenda).
 - (4) High Fructose Corn Syrup (HFCS).
 - (5) Monosodium Glutamate (MSG).
 - (6) Bromated Flour.

- b) **Exception.** The Greenmarket Director, in their sole discretion, may waive a Producer’s compliance with this rule for a defined, reasonable period based on hardship, such as difficulty, after due diligence, identifying alternative ingredients.
4. **Plastic Packaging.**
- a) **Statement of Intent.** It is the intent of Greenmarket to reduce the use of plastic packaging in general and to eliminate the use of harmful plastics.
 - b) **Bags.**
 - (1) Producers may not use or offer plastic shopping bags, commonly called “T-shirt bags,” or any plastic shopping bag with a handle.
 - (a) **Exception:** Producers may use or offer jumbo plastic bags, commonly called “blue bags,” for wholesale orders
 - (b) **Exception:** Producers may use or offer produce bags, commonly on a roll.
 - (2) Producers may use or offer to customers paper bags and reusable fabric bags. Producers must charge a 5-cent fee for each paper bag sold to a customer (excluding such customers who are Supplemental Nutrition Assistance Program (SNAP) and/or Special Supplemental Nutrition Program for Women, Infants and Children (WIC) recipients), which fee must be remitted to the state. A Producer’s failure to adhere to this policy may result in a Fine of \$50 per day of infraction under Part VI.B.1 - “*Fines.*”
 - (3) All products shall be packaged and labeled in accordance with NY State regulations.
 - c) **Pre-sale Packaging.** Producers may not use pre-sale packaging such as containers, clams, trays, cartons, bottles, boxes, and lids, composed of plastic types #3 (PVC, polyvinyl chloride), #6 (PS polystyrene or Styrofoam), and #7 (PC, polycarbonate.)
 - (1) **Exception.** The Greenmarket Director, in their sole discretion, may waive a Producer’s compliance with this rule for a defined period based on hardship, such as difficulty, after due diligence, in acquiring pre-sale packaging composed of alternative plastic types.
5. **Product Recalls.**
- a) Should any product sold by Producers become subject to a (i) mandatory recall by any Law, including by any governmental agency, or (ii) voluntary or precautionary recall, such Producer shall notify the Greenmarket Director and Farm Inspections Manager of any such recall. Such notification must be made within 24 hours after, the earlier of (i) the receipt of notice by a governmental agency to recall such product or (ii) the issuance of the recall. The notification must include the following information:
 - (1) The product(s) subject to the recall.
 - (2) The dates such product(s) were sold by the Producer at their Greenmarket location.
 - (3) Any sickness or illness reported related to such recall, if applicable.
 - (4) Producer’s contact information.
 - (5) The governmental agency notice, if applicable.
 - b) Promptly following delivery of such notice by the Producer (but in no event later than the Producer’s next Greenmarket attendance), the Producer must post a recall notice at their Greenmarket location(s) for a reasonable duration (such duration to be no less than 14 calendar days) including the information listed above in subsections a-e. A Producer’s failure to adhere to this policy may result in a Violation under Part VI.C - “*Violations.*”

C. PRODUCT BALANCE

In an effort to ensure product balance, the Director may require a Producer, as a condition of specific market assignments, to withhold certain products from market indefinitely.

D. REQUEST TO SEND PRODUCT OUT FOR “OFF-FARM” PROCESSING

1. Where off-farm processing for Eligible Products is not expressly permitted within these Regulations, Farmers and Fishers may request to send produce and products they grow, raise, Catch or forage to a Regional facility for processing, provided:
 - a) **Product Traceability.** The Farmer and/or Fisher can ensure, demonstrate, and document that the product received back is made from the Farmer’s or Fisher’s own produce or products.
 - b) The item is made according to the Farmer’s or Fisher’s own recipe.
2. Producers should submit written requests to the Director.
3. Approved requests expire at the end of each Market Year (March 31). As such, requests must be re-submitted annually for approval by the Director.

E. REQUEST TO PURCHASE REGIONAL FARM PRODUCTS

1. **General.** If Greenmarket Personnel determines there is an insufficient quantity of a certain product(s) in a particular market, the Director, by written approval, may approve a request only by Farmers to purchase specified items of any Eligible Product. (See Part III - “*Eligible Products.*”)
2. **Quantity of Purchased Products.** If approved, such Purchased Products will be limited to:
 - a) Up to three (3) items from May 15th through December 31st;
 - b) Up to five (5) items from January 1st through May 14th; and/or
 - c) No more than 25% (visibly one-quarter) of the Producer’s display.
3. **Sources of Purchased Products.** If approved, such Purchased Products must be grown by and procured from a Farmer in the Region.
4. **Signs Required.** Such Purchased Products must be identified at point of sale with the actual Farmer’s name and the town and state where the farm is located.
5. **Notification.** Greenmarket will notify all Farmers at the impacted market that such a request has been made.
6. **Withdrawal and Expiration of Approvals.** The Director may withdraw permission with one week’s notice. If not withdrawn, approved requests expire at the end of each Market Year (March 31). As such, requests must be re-submitted annually for approval by the Director.

F. ELIGIBLE PRODUCTS, EDIBLE

1. **PRODUCE**
 - a) **General.** Producers may only sell produce they grow, including fruit, grain, herbs, legumes, mushrooms, sprouts, and vegetables, either fresh, frozen or dried. Producers must dry or freeze their own produce.
 - b) **Foraging.** Only Farmers may forage wild produce not protected by Law from property they own or lease. As per the New York State Department of Agriculture and Markets, wild foraged mushrooms can only be sold by a certified mushroom identification expert.
 - c) **Quality.** Produce must be grown, harvested, and cared for after harvest so as to assure customers receive fresh, high-quality produce. Greenmarket Personnel may remove any deteriorated produce from the market.

2. **BAKED GOODS**

Statement of Intent. Greenmarket believes that Baked Goods contribute to the success of our markets and have since our inception. Baked Goods available at Greenmarket must be a showcase for the agricultural products that are available in our Region.

- Use Regional ingredients whenever possible.
- Source directly from Regional farms and processors who work with Farmers.
- Support a Regional grain industry.
- Extend Greenmarket values by using fairly traded products.
- Avoid ingredients that do not support our mission.

a) **Eligibility.** Bakers who demonstrate a commitment to Regional agriculture by meeting the following standards will be considered eligible for participation at Greenmarket.

b) **Quality.** Baked Goods must be fresh.

c) **Ingredients.**

(1) **General.** Producers must prepare Baked Goods from scratch. Producers may not use commercially prepared dry bases or mixes, dough mixes, crusts, shells, or fillings.

(2) **Grain and Flour.**

(a) Farmers baking in license-exempt home kitchens are encouraged to use Regionally grown and milled grain and flour.

(b) Other Producers and Farmers baking in licensed kitchens must use a minimum of 25% Regionally grown and milled grain and flour (25% of total volume of grain products used to make Baked Goods to be sold at Greenmarket).

(3) **Baked Goods Containing Produce.**

(a) Produce that can be grown in the Region, except for nuts and seeds, must come from Regional farms.

(b) At market the Producer’s inventory of Baked Goods containing produce must include a minimum percentage of Regional Produce Baked Goods:

(i) A minimum of 75% for the second and third quarters of the Market Year (July through December), and

(ii) A minimum of 25% for the first and fourth quarters of the Market Year (January through June).

(4) **Eggs.** Fresh, whole eggs used must come from Regional farms.

(5) **Fluid Dairy.** Fluid Dairy Products used must come from Regional farms.

(6) **Meat.** All meat products used must come from Regional farms.

(7) **Honey and Maple Syrup.** All honey and maple products used must come from the Region.

(8) **Certified Organic Baked Goods.** Producers making certified organic Baked Goods may request a waiver from the Director for certified organic ingredients that they are unable to source from the Region.

d) **Points.** In addition to all of the above requirements, Producers must earn a minimum of four (4) points to be eligible to sell Baked Goods at Greenmarket. Producers may earn points as follows:

Farming	The Producer sells their farm’s agricultural products in Greenmarket, as per the Rules. At least 50% of the Producer’s display at market is agricultural product. 2 points
Grain/Flour	The Producer sources Regional grain and flour more than the minimum required. Points awarded by percent of all flour used for Greenmarket products that is sourced from the Region are as follows: 30%=1 point

Grain/Flour (cont'd)	35%=2 points 40%= 3 points >50%=4 points
Own Farm's Products	The Producer uses their farm's agricultural products in at least 50% of their Baked Goods product line. 1 point
Using all Regional Ingredients	The Producer uses no ingredients from out of Region (e.g., lemons, coconut, chocolate, etc.) 1 point
Other Regional Ingredients	The Producer uses Regionally grown and produced ingredients in addition to what is required. (e.g., regional fats, cheese.) 1 point per ingredient
Fairly-Traded Ingredients	The Producer uses non-Regionally grown produce ingredients (e.g., chocolate & cocoa, citrus, nuts & seeds) that are 100% fairly-traded. 1 point per ingredient
Milling	The Producer mills at least 50% of their flour. 1 point
Processing Ingredients	The Producer does the work of processing and storing the ingredients, with points awarded by percent of the processing/storing done by the Producer are as follows: 50%=1 point 100%=2 points

e) **Display.**

- (1) Upon request of customers or the Greenmarket Personnel, Producers must make available the list of ingredients for Baked Goods and the source farms for the ingredients used in the Baked Good.
- (2) Unwrapped Baked Goods must be covered and protected from the environment at all times.
- (3) Wrapped Baked Goods must be labeled in accordance with all applicable Laws.
- (4) "Potentially hazardous" Baked Goods must be displayed and stored at or below 41°F. (This includes high moisture content foods such as quiche, focaccia, empanadas, pork buns, or any similar products).

3. **BEVERAGES**

- a) **Non-alcoholic Beverages.** Producers may only sell fruit juice, vegetable juice, wheat grass juice, herb tea, milk, and soymilk they make bottled or by the cup. Producers may not use any concentrates in such products. Producers may not sell commercial tea, coffee, lemonade, or other drinks.

(1) **Fruit Juice and Vegetable Juice.**

- (a) **General.** Producers may only press fruit and/or vegetable juice, including cider, on their farm from fruit and/or vegetables they grow.

(b) **Exceptions:**

- (i) **Produce Sources.** Producers may purchase up to 40% of the produce used to make fruit and vegetable juice from the Region. The Director may approve a Producer's request to purchase up to 10% of produce that cannot be grown in the Region as flavoring in juice (e.g., lemon or ginger in apple juice). Upon request of customers or Greenmarket Personnel, Producers must make available the list of ingredients for the beverage and the source farms for the ingredients used in the beverage.

- (ii) Processing Facility. Producers may request to send produce to a facility to be pressed into juice provided they can demonstrate compliance with “Produce Sources,” immediately above. (see Part III.D – “*Request to Send Product Out for ‘Off Farm’ Processing.*”)
 - (2) **Wheat Grass Juice, Herb Tea, and Soymilk.** Producers may only make wheat grass juice, herb tea, and soymilk from wheat grass, herbs and soybeans such Producer grows.
 - (3) **Milk.** (“Milk” below.)
- b) **Alcoholic Beverages, including wine, hard cider, beer, spirits, and mead.**
 - (1) **General.** Producers may only sell alcoholic beverages that they make; Producers must press, blend, ferment, mature, distill and bottle beverages. Alcoholic beverages may only be sold by the bottle.
 - (2) **Ingredient Sources.** Producers must make their alcoholic beverages from their farm’s harvest (e.g., honey, grain, hops, fruit). Producers may purchase up to 40% of the ingredients used to make their alcoholic beverages from the Region. The Director may approve a Producer’s request to purchase up to 10% of ingredients that cannot be grown in the Region as flavoring in alcoholic beverages. Upon request of customers or Greenmarket Personnel, Producers must make available the list of ingredients for alcoholic beverages and the source farms for the ingredients used in the alcoholic beverage.
 - (3) **Compliance with Law.** Producers selling alcoholic beverages must comply with Part II.G.6 - “*Alcohol Signage.*”

4. **DAIRY PRODUCTS**

- a) **Milk.** Producers may only sell milk from animals that they manage and milk. Producers lacking on-farm dairy equipment may send their raw milk to an off-farm facility for processing (e.g., homogenization, pasteurization, and bottling) provided that the milk received back from such off-farm facility was exclusively produced from the Producer’s animals.
- b) **Other Dairy Products.** Other Dairy Products (e.g., cheese, butter, and yogurt) must be made according to the Producer’s own recipes. Producers without on-farm dairy equipment may send their milk to an off-farm facility for processing. Upon request of customers or Greenmarket Personnel, Producers must make available the list of ingredients for such Dairy Product and the source farms for the ingredients used in the Dairy Product.
 - (1) **Single-Milk Dairy Products.** At least 60% of the milk or cream used to make single-milk Dairy Products must come from the Producer’s herd. Producers may purchase up to the remaining 40% of the milk or cream from a Regional Farmer.
 - (2) **Mixed-Milk Dairy Products.** At least 80% of the milk or cream used to make mixed-milk Dairy Products must come from Producer’s herd. Producers may purchase up to the remaining 20% of the milk or cream for mixed-milk products from a Regional Farmer, only if the milk comes from a species of animal the Producer does not own.
- c) **Flavored Milk and Dairy Products.** If the Producer is selling a flavored milk or other Dairy Product, the use of Regionally grown flavoring ingredients is highly encouraged. Upon request of customers or Greenmarket Personnel, Producers must make available the list of ingredients for the flavored product and the source farms for the ingredients used in the flavored product.

- 5. **EGGS AND EGG PRODUCTS.** Producers may only sell eggs from poultry or fowl that the Producer owns. Producers may sell egg noodles, if such product is made with their own eggs.

6. **FISH AND SHELLFISH – CULTIVATED.**

Producers may only sell fish the Producer raises. Producers must not buy any trout fingerlings that are more than two inches long. Producers may send their fish to a facility to be cut or smoked; provided that the Producer only receives back their own fish provided to such facility.

7. **FISH AND SHELLFISH – WILD.**

Producers must catch wild saltwater fish and shellfish (hereafter ‘seafood’) from their own boat, nets, pots, and traps placed in Mid-Atlantic waters.

a) **Proof of Fishing Status.**

- (1) Producers must own and operate a commercial fishing boat, from which they regularly fish;
- (2) The Producer’s boat must be equipped to catch commercially the species they bring to market;
- (3) At least 50% of the Producer’s earned income must come from their own Catch; and
- (4) Producers must submit a copy of their current commercial boat license, photo of boat, appropriate fishing licenses, any special species permits, and docking permit.

b) **Cutting.**

- (1) Producers may send their own Catch to be cut at a Regional facility if they can document that they receive only their own seafood back, and this Regional facility will permit, in writing, inspections as required under Part V - “*Verification.*”
- (2) Producers must provide receipts for all cut seafood sold at market for review by the Greenmarket Personnel.

c) **Smoked Seafood and Other Seafood Products.** Producers may only sell smoked seafood and other seafood products from their own Catch at market.

d) **Permission to Purchase Seafood.** Producers may request permission from the Director to purchase up to three (3) species of seafood. Producers must provide receipts for purchased fish at market for review by Greenmarket Personnel. Purchased fish must:

- (1) Be purchased whole or gutted. The Producer must fillet, steak, smoke or otherwise process purchased fish in their own facilities;
- (2) Come directly from (i) commercial fishing boats landing at the Producer’s dock, (ii) a handling facility at the Producer’s dock, if direct purchase is not permitted, or (iii) other docks where commercial fishing is the main activity, so long as such dock is within 20 miles of the Producer’s dock;
- (3) Come from waters less than 100 nautical miles from the Producer’s dock;
- (4) Constitute no more than 25% (visibly one-quarter) of the Producer’s total display and total product weight at market; and
- (5) Be identified at the point of sale with the name of the boat or dock where such purchased fish was obtained.

8. **GRAIN AND GRAIN PRODUCTS.** Producers may only sell grain they grow, and grain products (including pancake mix and pasta) from grain they grow. Grain products may be processed off-farm provided the Producers can document that only their grain is returned to them.

9. **HONEY AND BEE PRODUCTS.** Producers may only sell honey and bee products (including propolis, pollen, royal jelly, and honeycomb) that such Producer collects and bottles from their hives in the Region. Any bee pollen sold and added ingredients in honey spread products used must come from the Region. The Director may approve a Producer’s request to purchase up to 10% of added ingredients that cannot be grown in the Region to be included in honey and bee products.

10. **MAPLE PRODUCTS.** Producers may only sell syrup and other maple products they collect and process from sugarbush they own or rent in the Region. Added ingredients used in maple products must come from the Region. The Director may approve a Producer's request to purchase up to 10% of added ingredients that cannot be grown in the Region to be included in maple products.

11. **MEAT AND MEAT PRODUCTS**

- a) **Red Meat.** Producers may only sell meat that is 100% from animals they raise from weaning.
- b) **Poultry and Fowl.** Producers may only sell meat that is 100% from poultry and fowl they raise from day-old chicks.
- c) **Processing of Animals.**
 - (1) Animals may be slaughtered, cut, and wrapped off-farm, provided that the resulting meat sold is only from the Producer's animals.
 - (2) Meat may be processed (e.g., smoked, made into sausage, dried, ground, frozen) off-farm, provided that only meat from the Producer's animals is used. Producers may add other ingredients, such as spices, to their meat products.

12. **PRESERVES, INCLUDING JAMS, JELLIES, RELISHES, CHUTNEYS, CANNED AND PICKLED PRODUCE**

- a) Producers may only sell preserves they make.
- b) Produce that can be grown in the Region must come from Regional Farmers.
- c) Produce that cannot be grown in the Region may be purchased. Non-Regional products must not constitute more than 15% of the Producer's inventory at market.
- d) Producers must provide all current canning and kitchen licenses.

13. **PROCESSED FOOD, MISCELLANEOUS.**

Processed foods may only be sold by Farmers and Ocean Fisher Producers.

- a) **Production.**
 - (1) Producers must be in full control and supervision of the production of all processed food items. Processed food items must be made according to the Producer's own recipes, by either the Producer or their Producer Representatives.
 - (2) Preparing foods (e.g., cooking, heating or reheating, assembling or serving) at market is strictly prohibited, except for beverages sold by the cup (see Part III.F.3.a - "*Non-Alcoholic Beverages.*")
- b) **Ingredients.**
 - (1) The Producer must grow, raise, or catch the 'defining ingredient' (e.g., clams in clam chowder, tomato in tomato sauce, basil in pesto, beef in beef stew).
 - (2) Any additional ingredients must be directly obtained from the Regional farms where grown and processed, except as indicated below:
 - (3) Supplemental quantities of the following ingredients may be used without limitation as to source: soy sauce, vinegar, fresh citrus fruit, seeds or nuts, cornstarch or thickeners, gypsum or nigari, salt, oil, fat, sweeteners, or spices. Ingredients not specifically listed here must be approved by the Director, review by the FCAC may be requested.

- c) **Display:**
 - (1) Upon request of a customer or the Greenmarket Personnel, Producers must provide a list of ingredients used in the processed food item and the source farms of the ingredients used in the processed food item.
 - (2) Processed food items sold at market must be pre-packaged.
 - (3) Processed food items sold at market must be labeled in accordance with all applicable Laws.
- d) This Processed Foods rule does not supersede rules established herein for production of Baked Goods, beverages, Dairy Products, egg products, fish and shellfish products, grain products, bee products, maple products, meat products, preserves, dried or frozen produce, and vinegar.

14. VINEGAR

- a) Farmers may only sell vinegar they make from Regional ingredients such as cider.
- b) Farmers may only sell flavored vinegar provided:
 - (1) They make the vinegar from ingredients they make (such as wine or cider), adding only purchased Regional produce for flavoring; or
 - (2) They grow the fresh produce flavoring and purchase vinegar made from Regional ingredients.

G. ELIGIBLE PRODUCTS, NON-EDIBLE

1. ANIMAL PRODUCTS

- a) **General.** Producers may only sell animal products (e.g., down, feathers, fleece, untooled leather and wool) from animals they raise.
- b) **Wool, Fleece, Feathers, and Leather.** Wool, fleece, feathers, and leather may be processed off-farm so long as the Producer only receives their own animals' product in return. Producers must provide receipts and other documentation related to such off-farm processing to Greenmarket Personnel on request. Producers may only sell crafted wool products they make from their own animals' wool or fleece.
- c) **Candles.** Producers may only sell candles that such Producer makes from their hives' beeswax.

2. PLANT MATERIALS

- a) **Field and Greenhouse-Grown Plants and Flowers.** In order to sell such products at market, Producers must:
 - (1) Start bedding, potted plants, and flowers either from seed, cell pack, bulbs, cutting, or plugs or received dormant (e.g., azaleas, hydrangeas, and roses). Producers must plant or repot all plant material.
 - (2) Be registered, licensed, or listed with the Cooperative Extension in the appropriate counties.
 - (3) Own their greenhouses, unless other arrangements are approved by the Director prior to the use of the other arrangements.
 - (4) Ensure that plants are well-established with good root systems and are free of disease. Repotted plants must be well rooted to the next size container.
 - (5) Sell large foliage plants from air-layered cuttings rooted in their greenhouse, only in limited quantities and varieties.
- b) **Cut Christmas Trees.** Producers may only sell cut Christmas trees that they start from seed, seedlings, or transplants, and manage for a minimum of five (5) years.
- c) **Vines and Gourds.** Only Farmers may sell vines and gourds that they grow.

d) **Wild and Foraged Plant Material.**

(1) Only Farmers may forage plant material not protected by Law and such forage must be on property they own, or from rented property within twenty (20) miles of their farm.

(2) Farmers must not forage the following: lilacs, hydrangeas, forsythia, azaleas, peonies, fruit tree branches, holly, juniper, or boxwood. These items must be collected from plants the Farmer cultivates on property they own or rent within twenty (20) miles of their farm.

e) **Displays and Other Arrangements.** Producers may only sell displays and other arrangements of fresh or dried flowers, or greens (including wreaths and roping) that they make from plant materials they grow or forage according to the Regulations.

f) **Wood Products.** Only Farmers may sell wood products (e.g., firewood, mulch chips, rough-cut wood, and baskets made from vine and woven wood). Farmers must obtain such wood products sold at market from only property they own or rent.

H. GIFT BASKETS.

Only Farmers may sell gift baskets. The Farmer must grow or make the majority of the products included in the basket. Products not grown or made by the Farmer must come from other Greenmarket Farmers. Products within the basket must comply with above Parts III.F - “*Eligible Products, Edible*” and III.G - “*Eligible Products, Non-Edible*” of these Regulations.

PART IV: AT MARKET

A. MANAGEMENT OF MARKETS

1. **Enforcing the Regulations.** Greenmarket Personnel are responsible for and charged with enforcing these Regulations.
2. **Market Data Collection.** Greenmarket Managers are responsible for market data collection, such as inventories, price comparisons and recording the name of the Producer and/or Producer Representative(s) in attendance at market.
3. **Market Layout.** Greenmarket Personnel are responsible for market layout, including, but not limited to, situating Producers and vehicles within the market.
4. **Directions from Greenmarket Personnel.** Producers and Producer Representatives at market must follow the directions of Greenmarket Personnel. Disagreements with specific directions or problems with the conduct of Greenmarket Personnel should be submitted to the Director after the incident in accordance with Part II.I.2 - "*Grievance Procedures.*"
5. **Removal of Items.** Greenmarket Personnel may remove items that constitute infractions of these Regulations or any applicable Laws.
6. **Absent Manager.** When the Manager is not present, Producers should refer problems at a market to the Greenmarket Office.

B. CONDUCT AT MARKET

1. **Producer Accountability.** Producers are solely responsible for the conduct of their Producer Representatives and for any penalties (for the avoidance of doubt, including any Fines and Violations) that their Producer Representatives incur.
2. **Punctuality.** Producers and Producer Representatives must arrive at least 30 minutes before the market opens. Producers who arrive late may be denied admission or admitted and assigned a space at the discretion of Greenmarket Personnel.
3. **Appropriate Behavior.** Producers and Producer Representatives shall be considerate and respectful to all Greenmarket Personnel, fellow Producers, fellow Producer Representatives, and all members of the community, and handle disagreements in a respectful manner.
 - a) **Unacceptable behavior from any Producer or Producer Representative will not be tolerated and will result in Violations, immediate suspension, or termination.** Producers shall notify Greenmarket Personnel of any unacceptable behavior.
 - b) GrowNYC has the right to remove any Producer Representative who engages in unacceptable behavior from the market at any time. GrowNYC does not, however, have any right to control a Producer Representative's employment, contractor or volunteer status, or to intervene in any employment or other disputes between a Producer and a Producer Representative. A Producer retains the sole right to make all decisions regarding the hiring, termination, and other conditions of employment, contractor, volunteer status or familial relationship for all Producer Representatives.
 - c) Unacceptable behavior includes, but is not limited to:
 - Intimidating, harassing, abusive, discriminatory, derogatory, or demeaning speech, materials, or conduct, particularly that related to sex, gender, sexual orientation, race, ability, age, cultural background, education, ethnicity, immigration status, language, nationality, national origin, physical appearance, economic status, or religion,
 - Violence, threats of violence, or violent language or symbols directed against another person. Any physical assault or threat of physical assault will result in immediate removal

and suspension from Greenmarket (see Part VI.D.1 - “*Immediate Removal from Market and Suspension or Termination*” for more information on immediate removal.)

- Boisterous, lewd, or offensive behavior or language, including but not limited to using sexually explicit or offensive language, materials or conduct, or any language, behavior, or content that contains profanity, obscene gestures, or racial, religious, or ethnic slurs,
 - Inappropriate photography or recording, including, but not limited to, taking photos within the event environment for use on social media, without the prior permission of the individuals or owners of the content therein, and
 - Failure to obey any Laws or directions given by Greenmarket Personnel.
4. **No Smoking or Alcohol.** New York City law prohibits smoking while handling food and public consumption of alcohol. Smoking of any kind or drinking alcohol by Producers or Producer Representatives at market is strictly prohibited.
 5. **Hawking.** Drawing attention to a Producer’s Selling Area and products by loud repetitive calling is highly discouraged. Greenmarket Personnel will limit or prohibit hawking.
 6. **Playing Music.** The playing of music or other amplified sound at any volume by a Producer or a Producer Representative at their Selling Area is strictly prohibited. Failure to adhere to this policy may result in a Fine of \$50 per infraction under Part VI.B.1 - “*Fines.*”

C. EQUIPMENT

1. **Safe Structures.** Market safety is the top priority of Greenmarket. Practices that ensure a safe marketplace for consumers, Producers, Producer Representatives, and Greenmarket Personnel are required, and must be habitual.
 - a) **Canopies.** Producers must secure their canopies immediately upon set up with a minimum of 40 lbs. per tent leg for a 10’x10’ or 25 lbs. per tent leg for a 5’x5’ canopy tent. Once a canopy tent is no longer secure it must be broken down immediately. Greenmarket Personnel may instruct Producers or Producer Representatives to remove canopies in extreme weather conditions when no amount of weight will be sufficient to secure a canopy (For additional requirements, see Appendix F: *Weights and Tie Down Requirements*).
 - b) **Safe Equipment.** All equipment (including but not limited to canopies, tables, fixtures, signs, coolers, tarps, shades, and lift gates) used for set-up and display at market must be kept in good condition. Any equipment Greenmarket Personnel deem unsafe for use must be removed immediately by the Producer or Producer Representative. All equipment must be safely positioned and secured to prevent injury.
2. **Scales.** Scales must be in compliance with applicable Law as set forth in Part II.G.4 - “*Scale Registration and Seals.*”
3. **Generators and Refrigeration.** Generators and refrigeration equipment should be quiet and odor-free. Greenmarket Personnel may require Producers to curtail or cease the use of a generator or refrigeration equipment if noise or odor result in multiple complaints from other Producers or customers.
4. To ensure compliance, Greenmarket Personnel may remove equipment.

D. PERMITS

1. Greenmarket Personnel shall provide the Producer one permit for each market where the Producer is reserved.
2. Permits must not be photocopied, reproduced, or misused under any circumstances.

3. Permits must be returned to Greenmarket Personnel upon the end of the Producer's reservation or attendance for the Market Year, expiration of the permit, suspension, or termination of the Producer from the market, or at any other time upon request of Greenmarket Personnel.

E. SANITATION

1. **Clean Stand.** All operations at the market must be sanitary. A Producer's assigned area (assigned area includes the Producer's canopy, display, storage areas and vehicles) should be kept free from refuse and debris. At the end of a market day, Producers must clean their assigned area and take home all refuse and debris.
2. **Samples.** Producers who offer samples of products must follow safe handling practices and guidelines. Samples must be covered to protect them from insects, dust, and other contaminants when they are not being actively sampled by customers. Samples must be actively tended to by the Producer and/or the Producer Representatives.
3. **Placement of Edible Products.** All Edible Products and packaging materials must be kept off the ground. At minimum, there must be a complete barrier between the product and the ground. Products must be protected from possible contamination.
4. **Trash Containers.** Producers must maintain their own trash receptacle in their Selling Area when necessary.
5. **Threats to Public Health.** Producers and their Producer Representatives must abide by any additional safeguards or protocols that GrowNYC puts in place to prevent the spread of COVID-19 or otherwise protect human health and safety (See Part VI.D.1.b for additional penalties related to COVID-19).
6. **Display Products.** Potentially Hazardous Food(s) that are exhibited for display may not be sold and must have signage that says, "For display only." Failure to adhere to this policy may result in a Fine of \$50 per infraction under Part VI.B.1 - "*Fines.*"
7. **Temperature Checks.** Producers selling products subject to storage requirements as outlined by the New York State Department of Agriculture and Markets must be able to prove with an approved style of thermometer that those products for sale are within the proper temperature range. Failure to adhere to this policy may result in a Fine of \$100 per infraction under Part VI.B.1 - "*Fines*" and may result in the removal of the products from market in accordance with Part IV.A.5.
 - a) Approved thermometers and their requirements.
 - (1) Infrared thermometers, which take an instant reading of the surface temperature of a product, must measure the item or its individual wrapping and not the refrigerated container. If using this style of thermometer, only one thermometer is required per market stand. Infrared thermometers must be designed for food.
 - (2) Refrigerator/freezer thermometers, which take a reading of ambient temperature. If using this type of thermometer, every cooler must have a thermometer dedicated to that cooler for each market day. If it is a digital version with an attached probe, the display should be kept outside of the container with the probe inside for at least 10 minutes before taking a reading. Analog versions of refrigerator/freezer thermometers must not contain mercury or glass.

F. MARKET SAFETY AND SECURITY

1. **Reporting Incidents at Market.** All incidents that impact public safety at market, including but not limited to accidents, injuries, theft, parked cars, and disputes, must be immediately reported to Greenmarket Personnel. If Greenmarket Personnel are not present, contact the Regional Coordinator, Operations Manager, or the Greenmarket Director. If the problem is serious or requires urgent attention, call 911.

2. **Incidents that Require Notification of Law Enforcement.** In the event of a serious matter that requires notification of law enforcement including theft (with the exception of de minimis or minor theft of merchandise), Producers **must** file a police report with the precinct that has jurisdiction over the market where the incident occurred. Upon a Producer’s request, this requirement may be waived by the Greenmarket Director. Failure to report an incident may result in a Violation.

G. VEHICLES

1. **Parking Vehicles.**
 - a) Parking for a Producer’s vehicle is subject to the availability of parking spaces at the market.
 - b) If parking is available and assigned by the Greenmarket Manager:
 - (1) Producers must park their vehicles in their assigned space. Producers must be able to park their vehicle in the assigned space.
 - (2) **Extra Space for Vehicle.** If a Producer’s vehicle exceeds the length of their display or canopy, the Producer may be charged for the extra space it occupies.
 - (3) **Approval for Larger Vehicles.** Producers may not bring a larger vehicle to market without prior written approval from the Director.
 - (4) **No Idling.** Once a vehicle is parked and stationary, the motor must be turned off.
2. **Moving Vehicles Safely.** Vehicles must be operated safely in the market. Unsafe operation includes, but is not limited to, moving any vehicle in the market between 7:30 AM and 7 PM, and moving a vehicle without permission or escort by Greenmarket Personnel.

H. CLAIMS, SIGNS, LABELING AND PROMOTION

1. **Claims Relating to Products Sold at Greenmarket.** Greenmarket creates a space where Producers and consumers have the opportunity to interact directly. Producers are encouraged to discuss their products, including the methods of production with their customers.
 - a) **Honest, Accurate and Verifiable Production Claims.** All production claims made in signs, labels, promotional activities and materials, and verbal communications must be honest, accurate and verifiable. During Greenmarket inspection the Producer must be able to provide evidence through documentation or other information sufficient to demonstrate that all production claims are accurate. The sufficiency of the evidence provided will be determined by and at the discretion of the Greenmarket Inspector and the Director.
 - b) **Approved Certifications.** Certification programs approved by Greenmarket are listed in Appendix D - “*Lists of Certifications and Approved Certifying Agencies.*” Producers who claim certifications under these programs must provide Greenmarket with current and valid certificates issued by those programs and must visibly display copies of those certificates in their Selling Area.
 - c) **Segregation of Certified and Uncertified Products.** Producers who have certain products that are certified and other products that are not certified, must separate such products and provide clear signage that differentiates the products to a consumer. Failure to do so may result in a Fine of \$200 under Part VI.B.1 - “*Fines.*” Banners or tents that have written certification claims on them are not allowed unless all products beneath the banner or within the tent are certified.
2. **Signs and Labels Required by Law.** Before selling commences for the market day Producers must display all signs required and label all products in accordance with these Regulations and applicable Laws.

3. Signs and Information Required at Market

- a) Greenmarket requires that Producers post the following signs before selling commences:
 - (1) A farm or business sign that identifies the name of the farm or business and the location of the farm or place of production;
 - (2) Price signs for all products;
 - (3) If approved to sell Purchased Products, signs identifying the source for each Purchased Product (see Parts III.E.4. & - “*Signs Required*” and III.F.7.d.5 - “*Permission to Purchase Seafood*” for more information on Purchased Products.)
 - (4) New York State sales tax registration if selling taxable items. (See Part II.G.3 - “*Taxable Edibles and Non-Edibles*” for more information on taxes).
 - (5) Current and valid documentation of certification if selling products with approved third-party certification. (See Part IV.H.1.b - “*Approved Certifications*” for more information on certifications).
 - (6) The permit provided by Greenmarket Personnel. (See Part IV.D - “*Permits*” for more information on permits).
 - (7) Farmers Market Nutrition Program (FMNP) Signage. Approved fruit and vegetable farmers must display the promotional farmer sign “We Accept NYS Farmers’ Market Coupons” at the market booth at all times during the June 1 through November 30 program season.
 - (8) Potentially Hazardous Food(s) that are exhibited for display must have signage that says, “For display only.”
- b) **Attractive Signs.** Signs should be attractive and clearly legible at a reasonable distance from the Selling Area. Makeshift signs, such as cardboard or construction paper, are not acceptable for the farm or business sign.
- c) **Placement of Signs.** All signs, including promotional signs and sandwich boards, must be kept within the Producer’s Selling Area unless otherwise permitted by the Manager.
- d) **Ingredient Lists and Sources.** Upon request of customers or Greenmarket Personnel, Producers must make available a list of ingredients and source farms of ingredients for any products sold at market, including Baked Goods, beverages, dairy products, and other Processed Foods.

PART V: VERIFICATION

A. GENERAL

To assure compliance with these Regulations, Greenmarket Personnel may inspect or visit all farms, fields, or facilities involved in the production and storage of products displayed for sale. The Producer must notify off-farm facilities they use that Greenmarket Personnel may contact them.

B. DOCUMENTATION

1. Producers must provide any help necessary to document thoroughly the products they display for sale at market and listed on their Product Listing.
2. Producers must keep detailed records and documentation that fully disclose activities and transactions of their operations, in sufficient detail as to be readily understood. Records must demonstrate that the Producer or their Producer Representatives performed all work associated with the production of the items with the Producer's equipment. Proof may include, but is not limited to, seed receipts, payroll records, and spray records. (See Appendix E: "*Preparing for a Greenmarket Inspection*," for examples of types of documentation.)
3. Records and documentation must be made available to Greenmarket Personnel at the time of inspection or upon written request. Producers must provide such documentation within ten (10) business days of the original written request. If the Producer is unable to provide documentation, a Violation may be issued for all products for which provenance cannot be verified. If a follow-up audit is required due to the Producer's lack of preparation, thoroughness, or at a Producer's request pursuant to Part VI.C.4.b - "*Request for a New Inspection*," the Producer shall pay \$350 for such audit.
4. Greenmarket Personnel must be permitted to take photographs to assist in documentation of an inspection or spot visit.

C. INSPECTIONS

1. **Scheduling and Conducting Inspections.** Inspections:
 - a) will be scheduled by Greenmarket Personnel with a minimum 24 hours' notice, unless the Producer waives this requirement;
 - b) will take place between 8 AM and 5 PM; and
 - c) must be conducted when the Producer or their Producer Representative is present, unless the Producer waives this requirement by indicating this in the inspection report. If a Producer Representative represents the Producer at the inspection, such Producer Representative must be knowledgeable about all aspects of production.
2. **During an Inspection.** It is the Producer's responsibility to ensure that the Greenmarket Personnel conducting the inspection has seen, or is familiarized with, all aspects of production before the conclusion of the inspection. This includes all crops or products currently in production, products currently harvested and those for future harvest, and all items in storage or in processing facilities. Please see Appendix E, - "*Preparing for a Greenmarket Inspection*," for more information on preparing for an inspection. If a follow-up inspection is required due to the Producer's lack of preparation or thoroughness, the Producer shall pay \$350 for that subsequent inspection.
3. **Following an Inspection.** Following an inspection, only products documented in the inspection may be sold at market.
4. **Refusing an Inspection.** Producers may not refuse an inspection. Refusal to permit an inspection, includes, but is not limited to, repeated failure to keep inspection appointments and unreasonable termination of an inspection. Refusal to permit an inspection may lead to an additional suspension under Part VI.C.2 - "*Additional Suspension*."

D. SPOT VISITS

1. **General.** Greenmarket Personnel may conduct spot visits to places of production to check on particular items or observe the packing for market.
2. **Conducting Spot Visits.** Spot visits:
 - a) do not require advance notice to the Producer;
 - b) will take place between 8 AM and 5 PM;
 - c) may be made within two (2) days of the Producer's attendance at market;
 - d) require the Inspector to identify the items in need of verification at the beginning of the spot visit. It is the responsibility of the Producer to show or present documentation of these items to the Inspector for the purpose of verification. At the conclusion of the spot visit, the Inspector will review their notes with the Producer. The Producer must sign off on the spot inspection form; and
 - e) must be conducted when the Producer or their Producer Representatives is present, unless the Producer waives this requirement by indicating this on the spot visit report. If a Producer Representative represents the Producer at the spot visit, such Producer Representative must be knowledgeable about all aspects of production.
3. **Refusing a Spot Visit.** Producers are not permitted to refuse a spot visit, and refusal to permit a spot visit may lead to an additional suspension under Part VI.C.2 - "*Additional Suspension.*"

E. ISSUES OF CONCERN

Greenmarket Personnel conducting an inspection or spot visit will review their inspection report notes with the Producer and discuss any issues of concern near the conclusion of the visit.

F. INVENTORIES

1. **General.** Greenmarket Personnel may conduct inventories at market.
2. **Conducting Inventories.**
 - a) Inventories will be conducted in the presence of the Producer, or if the Producer is not at market, their Producer Representative who is knowledgeable and able to answer questions about the products.
 - b) Producers must allow Greenmarket Personnel access to all products displayed and stored at market including those which are stored in vehicles. Producers who refuse to allow access to products stored in vehicles, must remove the products from the vehicle and display the products as to allow for accurate inventory.
 - c) All inventories shall include a beginning and end-of-day report.
3. **Refusing an Inventory.** Producers may not refuse to permit an inventory, and refusal to permit an inventory may lead to an additional suspension under Part VI.C.2 - "*Additional Suspension.*"

G. INSPECTIONS AT THE REQUEST OF ANOTHER PRODUCER

1. Producers may have information or believe that another Producer is in violation of the Regulations.
 - a) If a Producer has a complaint and wishes to have a farm or other facility inspected outside of its normally scheduled inspection, the Producer must:
 - (1) send the request to the Director in writing;
 - (2) name the Producer, the product(s) in question, and the reasons for suspecting the product(s); and
 - (3) include a complaint fee of \$200.
 - b) One or more Producers may join together in a complaint and share the fee.
 - c) The complaint(s) will be kept confidential at the request of the complainant(s).

2. Upon receipt of the complaint, the Director will notify the Producer in question of the complaint and schedule an inspection.
 - a) Greenmarket Personnel will conduct an inspection and notify both parties of the results within five (5) business days of receipt of the complaint.
 - b) If Greenmarket Personnel cannot conduct the inspection within five (5) business days of receipt of the complaint, the complaint fee will be refunded to the complainant(s).
 - c) If the Producer is found in violation of these Regulations:
 - (1) a Violation will be issued (See Part VI.C - “*Violations*”), and
 - (2) The complaint fee will be refunded to the complainant(s) and charged to the Producer found to have been in violation of the Regulations.
 - d) If the Producer is not found to have been in violation of the Regulations, Greenmarket will retain the complaint fee to defray the cost of the inspection.

PART VI: PENALTIES

A. GENERAL

Greenmarket Personnel may issue penalties to Producers for conduct in violation of these Regulations. Penalties may be issued as Fines, Violations, suspensions, or terminations. If the infraction is listed in the table in Part VI.B below, Greenmarket personnel shall issue the penalty as a Fine. If the infraction is not listed in the table below, the penalty shall be issued as a Violation, suspension, or termination.

B. FINES

1. Greenmarket Personnel may impose the following Fines:

Reference	Infraction	Fine
II.G.5	Credit Card Surcharge/Debit Signage	\$50
II.G.6	Alcohol Signage	\$50
III.B.4.2	Plastic Bags	\$50
III.F.1.c	Deteriorated Produce	\$50
III F.2.e.2	Baked Goods not covered	\$50
III F.13.c.2	Processed Foods not pre-packaged	\$50
IV.B.2	Late to market	\$50
IV.B.4	Smoking in the Selling Area	\$50
IV.B.5	Hawking	\$50
IV.B.6	Playing Music	\$50
IV.C.1	Unsafe or unsecured structure, table, equipment	\$100
IV.C.2	Inaccurate scale	\$100
IV.C.3	Noisy or noxious generator	\$50
IV.E	Unsanitary conditions	\$50
IV.E.1	Failure to clean up at end of day	\$100
IV.E.6.	No "For display only" sign posted	\$50
IV.E.7	Failure to follow temperature check policy	\$100
IV.G.1	Improper parking of vehicle	\$50
IV.G.2	Unsafe operation of vehicle	\$200
IV.H.1.c	Failure to differentiate certified and not certified products	\$200
IV.H.2	No label or incorrect label	\$50
IV.H.3.a.1	No farm/business sign posted	\$50
IV.H.3.a.2	No price signs posted	\$50
IV.H.3.a.3	No signs for approved purchased items	\$50
IV.H.3.a.4	NYS Tax registration not posted	\$50
IV.H.3.a.5	Third Party Certification not posted	\$50
IV.H.3.a.6	Lost permit/Failure to return permit	\$100
IV.H.3.a.7	No Farmers Market Nutrition Program signage	\$50
IV.H.3.d	No ingredient list and source information available	\$50
VII.D.1.d	Returned check	\$50
VII.D.2.b.1	Late payment of fee	greater of \$50 or 1.5% of balance due

2. Producers must pay any Fines by the payment due date on the billing statement where the charge appears. If the Producer thinks the Fine is incorrect, then the Producer may dispute the Fine pursuant to the procedure set forth in Part VII.D.4 - "Disputing a Statement."

3. Fines are cumulative and shall remain on the Producer’s record for the remainder of the Market Year. More than three (3) Fines issued for infractions of the same Regulation may result in reduction, suspension, or termination of market assignments by the Director; in such case, the Director will notify the Producer in writing before imposing such penalty. In the event such penalty would result in suspension from any market assignment for more than one month or termination from participation in the market, notice and an FCAC review of such penalty shall be undertaken as provided in Parts VI.C.2 - “*Additional Suspension*” and VI.C.3 - “*Notice of Violations, Suspension or Termination.*”

C. VIOLATIONS

1. Issuance and Subsequent Penalties

- a) Multiple Violations may be issued simultaneously.
- b) Each action by a Producer or Producer Representative that constitutes a Violation of the Regulations and does not otherwise result in a Fine may result in a Violation, suspension, or termination.
 - (1) The display for sale of each variety of product that constitutes such a violation of the Regulations is considered a separate action for the purpose of issuing Violations.
- c) Violations are cumulative and shall remain on the Producer’s record for four years from the date the Violations are issued.
- d) Except where noted in the Regulations, the issuance of a Violation shall result in the following penalties:
 - (1) **First Violation.** A warning letter;
 - (2) **Second Violation.** Suspension from all markets for one week;
 - (3) **Third Violation.** Suspension from all markets for one month;
 - (4) **Fourth Violation.** Suspension from all markets for the remainder of the Market Year;
 - (5) **Fifth Violation.** Indefinite termination from Greenmarket.

2. **Additional Suspension.** In addition to issuing Fines or Violations and imposing the associated penalties, the Director may issue an additional suspension of up to one month for the following infractions of the Regulations:

<u>Reference</u>	<u>Infraction</u>
II.F.1.a	Products sold at market grown outside the Region
II.F.2.a	Products sold at market made or processed outside the Region
II.G.	Non-compliance with law
III.A.1	Products sold at market made with ingredients grown outside the Region not expressly permitted in Part III - “ <i>Eligible Products</i> ”
IV.B.3	Unacceptable behavior under the Code of Conduct
IV.E.5	Failure to abide by GrowNYC health and safety safeguards or protocols.
IV.G.2	Unsafe vehicle operation
IV.H	Uncertified or false claims regarding production methods
V.C, D, & F	Refusing inspection, spot visit, or inventory

At the discretion of the Director, repeated infractions of any one Regulation resulting in additional suspension may also result in indefinite termination from Greenmarket.

3. **Notice of Violation, Suspension or Termination**
 - a) **Producer and FCAC Notification.** When the Director makes a provisional determination that a Violation of the Regulations has occurred and issues Violations, a suspension, or a termination, the Producer shall be notified in writing by Greenmarket Personnel in-person or by phone and by certified mail within five (5) business days (a "Penalty Notice.") Members of the FCAC shall receive a copy of the Penalty Notice by email.
 - b) **Written Notice.** The Penalty Notice shall include a description of the infraction, penalty, the text of the Regulation being enforced, and will reference Part VI.C.4 - "*Procedure Following a Penalty Notice - Request for FCAC Review of a Penalty*" below.
 - c) **Removal of Item(s).** When the Penalty Notice concerns a product, the Director may order that the product be removed.
 - d) **Customer Notification of Suspension or Termination.** When a Producer is absent from market because of suspension or termination, any customer who requests information about such absence will be informed by Greenmarket Personnel that the Producer has been found in Violation of these Regulations.
4. **Procedure Following a Penalty Notice; Request for FCAC Review of a Penalty**
 - a) **Acceptance or Request for Review.** Within fifteen (15) business days of receiving a Penalty Notice and before any penalty is imposed (except with respect to additional penalties as per Part VI.D.1 - "*Additional Penalties*" which may be imposed immediately), the Producer must:
 - (1) Accept the Violation(s) or other penalties without contest, or
 - (2) Request in writing to the FCAC Chair an FCAC review of the Violation or other penalty. Producers who do not request a review will be considered to have accepted the Violation(s) and any other penalties; and the Violations and any other penalties will be final, and the penalty or penalties imposed.
 - b) **Request for a New Inspection.** When the Violation concerns a product, documentation, or conditions at the Producer's farm or a facility involved in the production or storage of the product, the Producer may request a new inspection before the FCAC review meeting to re-document conditions. The Producer must make this request within five (5) business days of receiving the Penalty Notice and pay \$350 for such an inspection. If the re-inspection resolves the Violation, then the Violation will be removed from the Producer's record.
 - c) **Procedure for FCAC Review of a Violation**
 - (1) **Scheduling an FCAC Review**
 - (a) Within ten (10) business days of the Producer's request for review, the FCAC Chair will notify Greenmarket Management and the Producer of the date and time of the meeting to review the Violation(s) and prepare a recommendation for the Director.
 - (b) In special circumstances, an FCAC subcommittee may review the Violation(s) and any other penalties and make a recommendation in lieu of the full FCAC.
 - (2) **FCAC Recommendation.** Following the review, the FCAC will inform the Producer and the Greenmarket Director of the FCAC's recommendations within ten (10) business days.
 - (3) **Final Determination**
 - (a) The Director will review the recommendation of the FCAC and make a final determination within five (5) business days.
 - (b) The Greenmarket Director will notify the Producer of Greenmarket's final determination in-person or by phone; written notice will be followed by certified mail within five (5) business days.
 - (c) The Greenmarket Director will inform the FCAC members of Greenmarket's final determination.

D. ADDITIONAL PENALTIES

1. Immediate Removal from Market and Suspension or Termination.

- a) Any physical assault or threat of physical assault by a Producer or Producer Representative will result in immediate removal of such Producer or Producer Representative from market by Greenmarket Personnel and termination from Greenmarket.
- b) Any other unacceptable behavior by a Producer or Producer Representative, as described in Part II.J - "*Code of Conduct*" or Part IV.B.3 - "*Appropriate Behavior*", or a Violation of applicable Law, may result in immediate suspension or termination, if, in Greenmarket Personnel's discretion, such behavior or infraction poses a threat to human health or safety, or compromises the integrity or mission of or brings discredit upon Greenmarket, or compromises the market's compliance with Laws, including those promulgated to prevent the spread of COVID-19.
- c) Violations issued to Producers on probation may result in immediate suspension or termination from Greenmarket (see Part II.H.3 - "*Admission on Probation*," for more information on probationary periods).

PART VII: RESERVATIONS, CHARGES AND PAYMENTS

A. RESERVATIONS AND RESERVATION TYPES

Producers may request one of three types of reservations at markets (daily, prepaid and drop-in). The different reservation types allow for different kinds of attendance; each has conditions and requirements.

1. Daily

- a) With a daily reservation, the Producer will be expected at market each day of their reservation, and the Producer will pay for charges in accordance with the billing statement (see Parts VII.B - "*Attendance and Calculation of Space*", VII.C - "*Absence from Market*", and VII.D - "*Billing and Payment*" for more information on attendance, charges, absences, billing statements and payments).

2. Prepaid

- a) With a prepaid reservation, the Producer will be expected at market each day of their reservation and must pay for market fees in advance of the date of attendance, according to the payment schedule as set forth in the annual application. The Producer who prepays in full for space charges will receive discounted rates. (For Prepayment Eligibility and Conditions see Parts VII.A.2.b - "*Prepayment Eligibility and Conditions*," VII.B - "*Attendance and Calculation of Space*," VII.C - "*Absence from Market*," and VII.D - "*Billing and Payment*" for more information on attendance, charges, absences, and payments.)

b) Prepayment Eligibility and Conditions:

(1) General.

- (a) The length of a prepaid reservation at a market must be a minimum of a Quarter of the Market Year to be eligible for the discounted rate.
- (b) Producers may not change any aspect of their prepaid reservation after the prepayment deadline, including, but not limited to, the amount of reserved space, the dates of the reservation, or change the reservation type (either to or from prepaid).

(2) Remitting Prepayments. (See Part VII.D - "*Billing and Payment*" for more information.

(3) Prepaid Charges.

- (a) Producers with prepaid reservations will be charged for all the space for which they have reserved. There are no refunds for prepaid reserved space that the Producer does not use. Producers taking less space than reserved will not receive a refund. There are no uncharged absences, as indicated in Part VII.C.3 - "*Absences for Producers with Prepaid Reservations*."
- (b) Attendance and extra space charged outside of a prepaid reservation will not receive a discounted rate.

3. Drop-In:

- a) With a drop-in reservation, the Producer will not be expected at market each day of their reservation. The purpose of a drop-in reservation is for a Producer who would like to attend a market when product, weather, or space allows. The Producer will pay for charges in accordance with the billing statement (See Part VII.B - "*Attendance and Calculation of Space*", VII.C - "*Absence from Market*", and VII.D

- “*Billing and Payment*” for more information on attendance, charges, absences, billing statements and payments).
- b) Management may offer Drop-In reservations to Producers requesting Daily or Prepaid reservations at markets.
- c) **Availability of Space.** Drop-In reservations are not a guarantee of space at any market. In order to attend on a Drop-in basis, the Producer must contact the Manager by telephone in advance to ensure that space is available.

B. ATTENDANCE AND CALCULATION OF SPACE

1. **General.** The Producer or their Producer Representatives must sign the Manager’s market report to verify space taken. Producers should settle any space disputes with the Manager before signing the report.
2. Producers must be able to display their products within the space assigned.
3. If Producers need space in excess of their reserved space, or outside of the dates of their reservations, they may request additional space to be charged at the daily rate.
4. One space equals twelve (12) feet or ten (10) feet in length, depending on market location. Measurement of one space for each market is listed in in the application. The depth of space varies depending on location within a market.
5. Space will be calculated by whichever measurement is largest, length of display or canopy. At certain markets, as determined by the Director, where space is at a premium, space will be calculated market-wide by whichever measurement is largest, length of display, canopy, or vehicle.
6. The minimum space is half (1/2) space; additional space is calculated in quarter (1/4) space increments. Producers who occupy the minimum space may not have room for their vehicle.

C. ABSENCES FROM MARKET

1. **General.**
 - a) If a Producer cannot attend market for any reason, they must notify the Regional Coordinator before 12 PM (noon) on the day before the market. If the Regional Coordinator is unavailable, Producers must notify the Greenmarket Office no later than 12 PM (noon) on the day before the market.
 - b) Unless otherwise permitted in writing by the Director, if a Producer has more than three (3) un-notified absences in a Market Year, then such Producer may lose their market assignment for the remainder of the Market Year.
 - c) **Market Year Absences.** An extended absence for the remainder or entirety of a Market Year is subject to the “*Market Year Leave of Absences*” policy as set forth in Part VII.C.5 below.
 - d) **Scheduled Absences.** During the annual application Producers may request one scheduled absence per market. The date of the scheduled absence must be requested on the market request page in the annual application.
2. **Absences for Producers with Daily Reservations.** For each market:
 - a) From April through December, Producers will not be charged for two notified absences on days they reserve.
 - b) Producers will be charged for the third and all subsequent notified absences on days they reserve.

- c) Producers will not be charged for notified absences from January through March.
 - d) Producers will be charged for all un-notified absences.
 - e) **Exception:** Upon request from the Producer, the Director may grant uncharged absences due to crop failure, severe weather conditions, or farm/family emergency.
3. **Absences for Producers with Prepaid Reservations.**
- a) Producers will be charged for all absences on days they reserve between their first and last day of reservation.
 - b) **Exception:** Upon request from the Producer, the Director may grant uncharged absences due to crop failure, severe weather conditions, farm/family emergency, and, for Ocean Fishers, lack of or insufficient Catch.
4. **Absences for Producers with Drop-In Reservations.** Producers will not be charged for any absences.
5. **Market Year Leave of Absences**
- a) Greenmarket may, in its sole discretion, grant a leave of absence for the remainder or entirety of a Market Year (a “Market Year Leave of Absence”) to any Producer who requests in writing such an absence due to an ongoing Hardship. Producers are required to provide Greenmarket with written notice as soon as practicable, which notice shall include (i) reasonable details of such Hardship and (ii) a requested start date and expected end date for such Market Year Leave of Absence. Within 15 business days of receipt of such notice, the Greenmarket may grant a Market Year Leave of Absence to such Producer (an “Absent Producer.”)
 - b) No later than 60 days prior to the end date of such Producer’s then ongoing Market Year Leave of Absence, an Absent Producer may apply to the Greenmarket for an extension to a Market Year Leave of Absence for up to one additional Market Year by providing the Greenmarket written notice as soon as possible. Such notice shall include (i) reasonable details of such ongoing Hardship and (ii) an expected end date for such extension to such Market Year Leave of Absence. Within 15 business days of receipt of such notice, the Greenmarket may grant the extension to the Market Year Leave of Absence in its sole discretion.
 - c) During a Market Year Leave of Absence, Greenmarket may decide in its sole discretion to offer the assigned space now empty due to a Market Year Leave of Absence to another Producer (a “Replacement Producer”) for the duration of the Market Year. The Replacement Producer shall be notified that the space is subject to a Market Year Leave of Absence and may only be occupied by the Replacement Producer during the term of the Market Year Leave of Absence. At the end of such Market Year Leave of Absence, the Replacement Producer will, if possible, be assigned to another space, or be given priority to return in the future to the market should no space be available at such time. Greenmarket does not guarantee a Replacement Producer another space following the end of the term of the Market Year Leave of Absence.
 - d) In the event that a Market Year Leave of Absence is granted, the Absent Producer will not incur additional fees as of the effective date of the leave.
 - e) An Absent Producer shall confirm to Greenmarket in writing whether or not they intend to return to the market no later than 30 days prior to the end date of such Absent Producer’s Market Year Leave of Absence, which notice shall include (if

the Absent Producer intends to return) a confirmation that the Absent Producer is in compliance with all other criteria herein, including still being considered an eligible Producer.

- f) An Absent Producer returning to the market after a Market Year Leave of Absence shall be considered a returning Producer, and the Greenmarket shall afford such Absent Producer the same level of priority in respect of returning to its prior market space that it affords to any other Producer that returns to the market after a prior Market Year.
- g) For the purposes of this section, “Hardship” means any one or more of the following:
 - (1) Any serious and prolonged illness or physical incapacity or disability of such Producer or such Producer’s spouse or child or any other person for whom the Producer is primarily responsible for providing care (a “dependent”);
 - (2) Bereavement due to the death of such Producer’s spouse or child or dependent;
 - (3) Issues with the production of the Producer’s Products outside the direct control of the Producer, including, but not limited to, weather emergencies, fires, water shortages, and bad climate or any other demonstrable economic hardship; or
 - (4) Any other condition, fact, or circumstance outside outside the direct control of the Producer that, in the sole discretion of Greenmarket, causes substantial, prolonged, undue hardship to a Producer.

D. BILLING AND PAYMENT

1. General.

- a) **Statements.** Billing statements will be emailed monthly to Producers showing payments, charges, account balance and payment due date for any open charges.
- b) Producers can pay by check, money order, or approved electronic payment, payable to “GrowNYC” or “Council on the Environment, Inc.” Payments must be received by the due date. Payments will not be accepted at market.
- c) Encashment of any check or acceptance of any payment shall not constitute a guarantee of space at any specific market or any specific location within any specific market.
- d) **Returned Checks.** Producers may be charged a Fine of \$50 for a returned check. (See Part VI.B.1 - “*Fines.*”) Producers must pay returned check fees by the payment due date on the statement where the charge appears. Producers that have repeated problems with checks will result in such Producer being required to pay by money order or certified check.

2. Monthly Payments.

- a) Producers must pay the amount due on the billing statement by the date indicated on the statement.
- b) If full payment is not received by the payment due date on the statement:
 - (1) The Producer will be charged a late fee of \$50 or 1.5% of the balance due, whichever is greater (see Part VI.B.1 - "*Fines*"), and
 - (2) the Director may reduce, suspend, or terminate market assignments, unless otherwise disputed pursuant to Part VII.D.4 - "*Disputing a Statement.*"

3. Prepayments.

- a) Based on the Producer's approved prepaid reservations, Greenmarket shall calculate amounts due and email the statements indicating such amounts and the due dates.
- b) Producers who have a prepaid reservation must send such prepayment to the Greenmarket Office and it must be received by the prepayment due dates.
- c) If the prepayment is not paid in full by the due date, the Producer will not receive the discounted rate applied to prepaid reservations.
- d) If the bank returns a Producer's prepayment check for any reason, the Producer will not be eligible for the discounted rate applied to prepaid reservations.

4. Disputing a Statement.

- a) A Producer who believes there is an error in their statement must send a written notice to Greenmarket including, the date, market, dollar amount and brief explanation of the disputed item before the due date on the statement where the item first appeared.
 - (1) During a dispute, Producers are obligated to pay the parts of the statement that are not in dispute.
 - (2) Producers do not have to pay the disputed amount and will not be charged late payment fees while the dispute is being investigated.
 - (3) Upon the Director's final determination of the dispute and notification in writing, the Producer has two (2) weeks to pay all outstanding charges.

APPENDICES

APPENDIX A: DEFINITIONS

- 1. BAKED GOODS.** A category which includes bread, cakes, muffins, pastries, cookies, biscuits, crackers, pies, donuts, quiche, empanadas, and granola. Baked Goods may be sweet or savory and filled or unfilled, as applicable. Pasta is not considered a Baked Good.
- 2. CATCH.** As defined by the New York State Department of Environment.
- 3. DAIRY PRODUCTS.** Milk and products derived therefrom, and products of which milk or a portion thereof is a significant part, or any other definition used by the New York State Department of Agriculture and Markets.
- 4. ELIGIBLE PRODUCT.** Any product sold at the market that is consistent with these Regulations under Part III.
- 5. FARMER and COMMUNITY ADVISORY COMMITTEE (FCAC).** The FCAC advises Greenmarket Management on policy, Violations, and other issues. Elected Greenmarket Producers and community representatives are voting members of the FCAC. Producers have the right to bring their concerns or grievances before the FCAC for action on those concerns or grievances, without fear of retaliation from Greenmarket Personnel.
- 6. FCAC CHAIR.** The chairperson of the Farmer and Community Advisory Committee,
- 7. FARMERS.** Farmers include growers of produce (including fruit, vegetables, grains, herbs, legumes, mushrooms, and sprouts), plants and flowers (in fields or greenhouses) and Christmas trees; producers of dairy products, eggs, poultry, and meat of domestically raised animals; producers of maple syrup, apiarists and aquaculturists.
- 8. FDA.** The United States Food and Drug Administration.
- 9. FISHER.** A Producer who sells fish at the market.
- 10. FINE.** A type of penalty that may be issued for violation of the Regulations, as set forth in Part VI.B.
- 11. FULL PRODUCTION PARTNERSHIP.** Two individual Farmers both directly involved in production
- 12. GREENMARKET.** A program of GrowNYC/Council on the Environment Inc. Greenmarket staff are employees of GrowNYC/Council on the Environment, Inc. The following terms have been used:
 - GREENMARKET DIRECTOR or DIRECTOR.** The current Greenmarket Director or a designee.
 - GREENMARKET FARM INSPECTIONS MANAGER or INSPECTOR.** The current Farm Inspections Manager and their staff.
 - GREENMARKET MANAGER or MANAGER.** Greenmarket Personnel assigned to manage a given market.
 - GREENMARKET REGIONAL COORDINATOR or REGIONAL COORDINATOR.** Greenmarket Personnel assigned to oversee given market regions.

GREENMARKET MANAGEMENT. The Greenmarket Director and President of the GrowNYC.

GREENMARKET PERSONNEL. The Director and all other Greenmarket staff.

GREENMARKET OFFICE. 100 Gold Street, Suite 3300, New York, NY 10038

GREENMARKET REGULATIONS or REGULATIONS. The GrowNYC/Council on the Environment Inc./Greenmarket Agreement, the Greenmarket Rules & all other materials contained in the application package.

GROWNYC CHAIRPERSON. The current GrowNYC Chairperson.

GROWNYC PRESIDENT. The current GrowNYC President.

13. LAWS. All federal, state, county, and local laws, regulations, binding orders, and administrative guidance documents, including New York City and New York State laws, regulations, binding orders, and administrative guidance documents, including, without limitation, the laws and regulations of the New York City Department of Health and Mental Hygiene, the New York State Department of Agriculture and Markets, the FDA, and the United States Department of Agriculture, and Human Rights and Labor laws.

14. MARKET YEAR. April 1 through March 31. The Market Year is divided into four Quarters: First Quarter - April 1 to June 30, Second Quarter - July 1 to September 30, Third Quarter - October 1 to December 31, Fourth Quarter - January 1 to March 31.

15. MID-ATLANTIC. As defined by the Magnuson-Stevens Act of 1976.

16. OCEAN FISHER. A Producer who catches wild saltwater fish and/or shellfish as described in Part III.F.7.

17. OTHER PRODUCERS. Other Producers includes Ocean Fishers, bakers, and producers of preserves (including jams, jellies, relishes, chutneys, canned and pickled produce).

18. PENALTY NOTICE. Has the meaning prescribed to it in Part VI.C.3.a.

19. POTENTIALLY HAZARDOUS FOOD(S). Any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, cooked rice or other ingredients, including synthetic ingredients, in a form capable of supporting: (1) rapid and progressive growth of infectious, or toxigenic microorganisms; or (2) the slower growth of *C. botulinum*. (Source: NYS Code, Rules and Regulations.)

20. PRODUCER. The Producer, generally the owner, is the person who has control or authority and is responsible for overseeing all the aspects of the farm or other business operation. Producers include Farmers and Other Producers.

21. PRODUCER REPRESENTATIVE. A Producer's employee, contractor, volunteer, or other representative, including family members.

22. PRODUCT LISTING. The product listing submitted as part of the annual application.

23. PURCHASED PRODUCTS. Products sold at market pursuant to Part III.E.

24. REGION. The area described in Part II.B and illustrated by the map in Appendix B.

25. REGIONAL. Within the Region.

26. REGIONAL PRODUCE BAKED GOODS. Baked Goods containing Regional produce as the defining ingredient.

27. SELLING AREA. A Producer's canopy, display, vehicle, and storage areas.

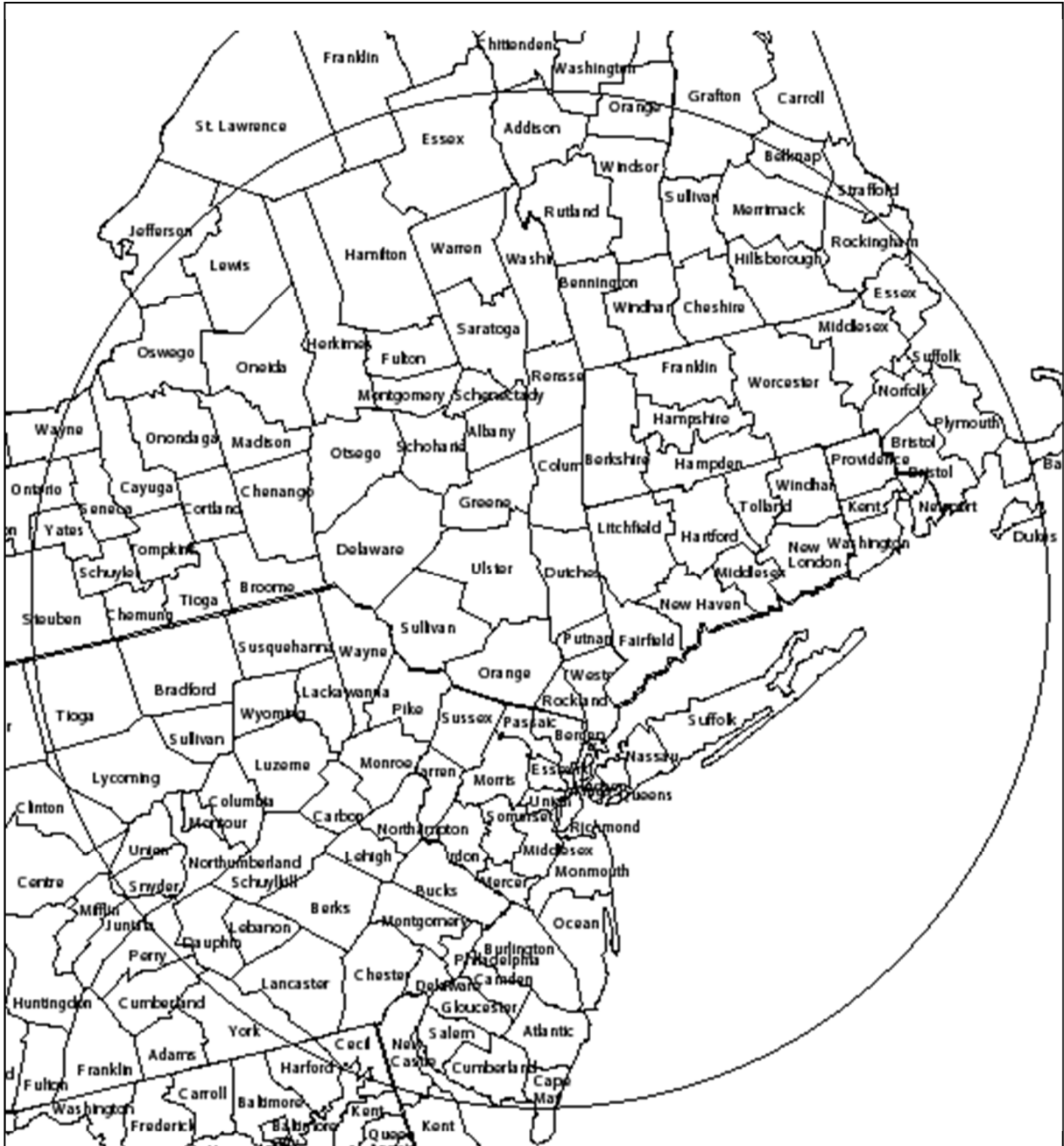
28. SUSTAINABLE PRODUCER. A Farmer practicing environmentally friendly methods of farming that allow the production of crops or livestock without damage to the farm as an ecosystem, including effects on soil, water supplies, biodiversity, or other surrounding natural resources. The concept of sustainable agriculture is an "intergenerational" one in which we pass on a conserved or improved natural resource base instead of one which has been depleted or polluted. Terms often associated with farms or ranches that are self-sustaining include "low-input," organic, "ecological," "biodynamic," and "permaculture." (Source: EPA.)

29. VALUE ADDED FOOD PRODUCTS. Food which has been changed in physical state or form (e.g., wheat milled into flour, fruit into jam, ground meat into sausage, or flour and eggs into baked goods).

30. VIOLATION. A type of penalty that may be issued for certain infractions of the Regulations, as set forth in Part VI.C.

31. WORKER COOPERATIVE. A partnership, limited liability company or corporation in good standing in its jurisdiction of incorporation or formation that is owned, operated, and controlled by its members who are directly involved in production.

APPENDIX B:
Map of the Region



APPENDIX C:
Some Numbers and Addresses of NYC and NYS Agencies

New York State Department of Agriculture & Markets

(e.g., Marketing, Food safety, Plant Industry, Licensing, Animal Industry, Farmers Market Nutrition Program coupon acceptance, WIC Fruit & Vegetable check acceptance)

Phone: (800) 554-4501
Website: www.agmkt.state.ny.us
Mail: NYS Dept. of Agriculture & Markets 10B Airline Drive,
Albany, NY 12235

New York City Department of Consumer Affairs, Weight, and Measures

(e.g., scales)

Phone: 718-349-0465
Website: www.nyc.gov/consumer
Mail: NYC Dept. of Consumer Affairs, Weights & Measures
42 Broadway, New York, NY 10004-1617

New York City Department of Finance

(e.g., General Corporation)

Phone: 212 639-9675 *or* 718-935-9500.
Website: www.nyc.gov/finance
Mail: NYC Dept. of Finance Correspondence Unit
66 John Street, New York, NY 10038

New York State Department of Taxation and Finance

(e.g., Sales Tax, Alcoholic Beverage Tax)

Phone: In state – 800-698-2909, Out of state - 518-485-2889
Website: www.tax.state.ny.us/sbc
Mail: NYS Tax Department, Taxpayer Assistance Center,
W.A. Harriman Campus, Albany, NY 12227

APPENDIX D:
List of Certifications and Approved Certifying Agencies

Criteria for accepting certifications from certifying agencies:

- **Accountability:** Is there a governing body that is accountable?
- **Standards:** Are the standards clear? Are the standards accessible to consumers?
- **Verification:** Is there a reliable verification process? Audits? Inspections?

Approved Certifying Agencies:

Animal Welfare Approved: animalwelfareapproved.org

American Grassfed: www.americangrassfed.org

American Humane Certified: www.americanhumane.org/

Certified Naturally Grown: www.cngfarming.org/

Demeter (Biodynamic): www.demeter-usa.org/

Eco Apple: www.ipminstitute.org/ecoapple.htm

Fair Trade USA: www.fairtradecertified.org/

Food Justice Certified: www.agriculturaljusticeproject.org/en/certification/

Friend of the Sea: www.friendofthesea.org

Food Alliance: foodalliance.org

Kosher (NYSDAM Kosher Law Enforcement): <https://agriculture.ny.gov/food-safety/kosher-law-enforcement>

Marine Stewardship Council: www.msc.org

Beyond Celiac: www.celiaccentral.org/gluten-free-certification

NOAA Fisheries: www.fisheries.noaa.gov

Non-GMO Project Verified: www.nongmoproject.org/product-verification/

National Sanitation Foundation (NSF):

www.nsf.org/consumer-resources/what-is-nsf-certification/gluten-free-certification

Protected Harvest: www.protectedharvest.org

Sustainably Grown Certified (SCS): www.scsglobalservices.com/sustainably-grown-certification

Sustainable Seafood Certification: www.scsglobalservices.com/services/sustainable-fisheries-and-seafood

USDA Certified Organic: www.ams.usda.gov/about-ams/programs-offices/national-organic-program

USDA Good Agricultural Practices (GAP): www.ams.usda.gov/services/auditing/gap-ghp

USDA Process Verified: www.ams.usda.gov/AMSV1.0/processverified

USDA PV Never Ever 3 (no antibiotics, growth promotants, or animal by-products)

<https://www.ams.usda.gov/content/ne3-marketing-program>

APPENDIX E: **Preparing for a Greenmarket Inspection**

Greenmarket Inspections. The purpose of the inspection is to verify Producer compliance with Greenmarket Regulations. We strongly recommend that all Producers take the following actions to prepare for a Greenmarket Inspection:

1. Review the sections of the **Greenmarket Regulations** that are relevant to their operation.
2. Review **Greenmarket Rules Part V “Verification.”**
3. If a Producer has questions in advance of the inspection, notify the Farm Inspections Manager or the Greenmarket Director.
4. Make prior arrangements for someone else to cover their tasks, if necessary.
5. Make sure to allocate enough time to review all aspects of their operation with the Inspector.
 - a. Be prepared to provide easy access to fields, buildings and storage and processing facilities both on and off farm.
 - b. If using multiple locations, that will require extra travel time, notify the Inspector so they can plan accordingly.
 - c. If an operation has multiple aspects of production, the inspection may be conducted over multiple visits (i.e., vegetable and fruit crops during the growing season, bakery, processing, and storage during the winter months).
6. Have all their records ready and accessible.

In order to track products from the field of origin to the final use or sale an audit may be performed. Greenmarket Rules Parts V.B.2 & 3 state:

“Producers must keep detailed records and documentation that fully disclose activities and transactions of their operations, in sufficient detail as to be readily understood” and “records and documentation must be made available to Greenmarket Personnel at the time of inspection or upon written request.”

Be prepared to explain their recordkeeping system to the Inspector.

The following checklists are helpful guides on how best to gather records for an inspection.

General Documentation Checklist

It is recommended that all operations keep the following records and have them available upon inspection.

- Labels and labeling, printed packaging, bags, boxes, ties, bands, and stickers. Lot numbering of retail and bulk products, if applicable.
- Payroll and employee records.
- Vehicle records, including registration, insurance, inspections, and licenses.

- Licenses and certificates appropriate for the operation and its marketing claims.
- Quantities of product taken to market.
- Sales records of all products sold at the market.
- Storage records of any off-farm facilities.

Crop Production Documentation Checklist

- Current and accurate maps of all production areas used to grow crops sold at Greenmarket, noting land history, tenure, and owner's name and contact information if rented.
- List of crops being grown, including varieties, and estimated yields.
- Receipts of inputs, including seed, fertilizers, pesticides, transplant media, and fuel.
- Harvest records, pick sheets, or load sheets of product taken to market.
- Storage records, including bin labeling.

Livestock & Poultry Production Documentation Checklist

- Animal list that includes species, breed, herd or flock size, ages, and birth dates of animals born on the farm.
- Receipts for purchased animals.
- Feed records, including harvest, purchase and storage records for all feedstuffs.
- Feed rations for each type of animal during each stage of growth and development.
- Veterinary, pharmaceutical, and other livestock production bills.
- Daily production records for eggs or milk.
- Live weights, dates, and location of processing facilities for slaughter stock.

Processor Documentation Checklist

- Production records for all ingredients produced on the farm.
- Purchase records for all ingredients purchased.
- Batch instructions or recipes for the products.
- Dates of processing, quantities of ingredients used, and yield of processed products.
- Storage locations and inventories for both ingredients and processed products.

APPENDIX F: Weights and Tie Down Requirements

Market safety is the top priority of Greenmarket, and good practices must be habitual. Regardless of weather conditions, weight and tie-down requirements must be strictly followed and adhered to.

Weights must be unloaded and appropriately positioned prior to erecting any tent structure. Tents must be immediately secured upon set up and must stay secured until the moment the tent is brought down. Fines will be issued immediately, and tents removed, if weights are not out or tents are up and not secured.

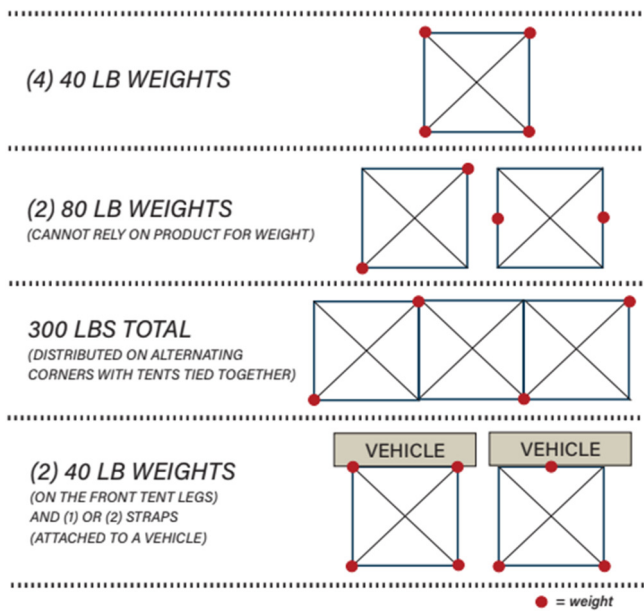
Weights should be evenly distributed. Weights should be secured to the canopy frame at the upper corners or from the center cross bar. Weights sitting on tent feet are not sufficient. Tent feet wear out and break, as do pushpins on telescoping tent legs. Sandbags wrapping tent legs are not sufficient – the bags must be secured to the upper frame of the tent. No stretched bungees should be used to attach weights (elastic wears out and snapping bungees are extremely dangerous). Ratchet straps, camel buckle straps, strong ropes/cords or chains are good options. All equipment used to attach weights must be in good condition (no fraying). No weights should be suspended and swinging.

Weights must be attached securely and should not pose a threat of tripping. Producers must use a minimum of 40 lbs. per tent leg, or 160 lbs. for a 10 foot canopy tent, or 25 lbs. per tent leg for a 5'x5' canopy tent. .

Chart of minimum weights for tent set ups:

One 10 ft. tent (100 sq ft.)	160 lbs.
Two 10 ft. tents (200 sq ft.)	240 lbs.
Three 10 ft. tents (300 sq ft.)	300 lbs.
Four 10 ft. tents (400 sq ft.)	360 lbs.
Five 10 ft. tents (500 sq ft.)	420 lbs.
Six 10 ft. tents (600 sq ft.)	480 lbs.
Seven 10 ft. tents (700 sq ft.)	540 lbs.
Eight 10 ft. tents (800 sq ft.)	600 lbs.
Nine 10 ft. tents (900 sq ft.)	660 lbs.
Ten 10 ft. tents (1000 sq ft.)	720 lbs.

SAMPLE Bird's Eye View of Tent Set Ups



If a vehicle is used to secure one side of the tent, this can only account for half of the necessary weight, meaning for a 10 ft. tent, an additional 80 lbs. is needed on the front of the tent. Producers must use designated weights, and may not rely on other items, including but not limited to product, tables, or coolers as weights.

In high-wind conditions (where sustained winds reach 20 mph or where gusts reach 30 mph), weights may no longer be effective, and Producers or Producer Representatives use tents at their own risk. In such high-wind conditions, managers may determine that tents need to come down. Producers or Producer Representatives working alone should ask for assistance to set up or take down a tent.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 5)

RESOLVED, that the Franchise and Concession Review Committee (FCRC) authorizes the NYC Department of Parks and Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a concession agreement with Council on the Environment, d/b/a GrowNYC, to operate and manage Greenmarket Farmers’ Markets at various parks Citywide. The Term of the Concession shall commence upon the date in the written Notice to Proceed (“Commencement Date”), and shall terminate no later than October 31, 2034.

Compensation to the City at regular locations will be in the form of a percentage of gross receipts. All other locations will charge a monthly fee per active operating site.

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

11/13/2024

Date: _____

Signed: _____

Title: City Chief Procurement Officer

Rule 1-14: Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Citywide Tennis Professionals Concession ID CWTP-2024 B28-TP
 Description For the Operation of Tennis Professional Concessions at Various Locations Citywide Agency New York City Department of Parks and Recreation ("Parks")

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Zurab Tskhakaia Telephone 646-520-5377
 Address 1131 Ave Z, Apt 1A EIN or SSN # 826-46-0668
Brooklyn, NY, 11235 Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 11/24/2027 Concession Site(s) Yes No
 Renewal Option(s) _____ to _____ Address Dyker Beach Park
 _____ to _____ Lucille Ferrer Playground & Bay 8 Street
 Total Potential Term 4 years Borough Brooklyn Community Board 10
 >20 years – FCRC unanimously approved term on ____/____/____ Block# 6418 Lot# 1

Recommended Annual Revenue

(Check all that apply)
 Annual Fee(s) \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Additional information

Notice Requirements

Please indicate below how the Notice of Intent to Enter into Negotiations was publicized:
 REQUIRED At least 5 successive issues of the City Record, from 06/18/24 to 06/25/24 (the last of which was no fewer than 10 days before negotiations were expected to begin)
 REQUIRED Published on the City's website on 06/18/24 (the same day it was first published in City Record)

Award is a Major Concession

Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:
 CPC approved on ____/____/____
 City Council approved on ____/____/____
 N/A
 No

Negotiation Requirements

The due date for proposers to respond to the Notice of Intent to Enter into Negotiations was: 07/22/24 at 5:00 AM PM
2 potential concessionaires responded by that time.

Please select the appropriate option below

The agency negotiated with all qualified potential questionnaires that had expressed interest,
 OR;

The agency determined that it was in the best interest of the City to negotiate with fewer potential questionnaires, and the CCPO approved such determination on ____/____/____. Negotiations were conducted with ____ potential concessionaires

Please describe the negotiation process conducted, including any Best and Final Offers ("BAFOs") requested:

Parks had video conference calls with proposers, offers and proposals were received, and proposals were reviewed.

The agency certifies that the concession manager has maintained a written record of the conduct of negotiations and the basis for every determination to continue/suspend negotiations with each potential concessionaire

Rule 1-14: Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: ___/___/___

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ___/___/___ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on 11 / 13 / 24 (date of the FCRC public meeting)

Votes in favor: _____ Votes against: _____

OR

The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ___/___/___

Authorized Signatures

Agency Staff

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

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

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

Signature _____ Date _____

City Chief Procurement Officer

ADDITIONAL INFORMATION

For Agency Use With Concession Forms

Citywide Tennis Professionals

CWTP-2024 B28-TP

Concession Title _____ **Concession ID** _____

Description For the Operation of Tennis Professional Concessions at Various Locations Citywide **Agency** New York City Department of Parks and Recreation ("Parks")

Season 1 (2024)*: \$3,000.00
Season 2 (2025): \$3,500.00
Season 3 (2026): \$4,000.00
Season 4 (2027): \$4,500.00

APPROVAL AS TO FORM OF A PERMIT BY STANDARD TYPE OF CLASS

AGENCY: DEPARTMENT OF PARKS AND RECREATION

PERMIT: TEMPLATE VENDOR PERMIT FOR THE OPERATION OF TENNIS
PROFESSIONAL CONCESSIONS AT VARIOUS LOCATIONS CITYWIDE

SOLICITATION: CWTP-2024

I hereby approve as to form and certify as to legal authority the annexed “Tennis Professional Concession” vendor permits by standard type of class. This approval is valid for a period of one (1) year from the date hereof and for a maximum of thirty (30) permits. The above approval is made on the express understanding that the substantive language of the subject permits will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the permits requiring names, dates, locations, dollar amounts, or other similar details may be completed.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY



ACTING CORPORATION COUNSEL YHW

DATE: 8/27/2024

LM # 2024-062529



CITY OF NEW YORK
DEPARTMENT OF PARKS & RECREATION

PERMIT

<u>PERMITTEE NAME & ADDRESS</u> ZURAB TSKHAKAIA 1131 AVE Z, APT1A BROOKLYN, NY, 11235		<u>TELEPHONE</u> 646-520-5377	<u>MOBILE</u> 646-520-5377
		<u>FAX</u>	<u>CONTACT</u> ZURAB TSKHAKAIA
<u>DESCRIPTION OF CONCESSION/ EVENT</u> This tennis professional is authorized to use one (1) tennis court for the purpose of teaching tennis at the Premises defined below during the times that the court is open for use. The court shall be available to the public when lessons are not scheduled. Additional services may not be offered without NYC Department of Parks & Recreation's written permission.			
<u>PARK/ LOCATION IN PARK ("PREMISES")</u> Dyker Beach Park Lucille Ferrer Playground and Bay 8 Street		<u>BOROUGH:</u> Brooklyn	<u>PERMIT NO.:</u> B28-TP
<u>EFFECTIVE DATE:</u> Notice to Proceed	<u>EXPIRATION DATE:</u> November 19, 2027		
<u>FEE AND PAYMENT TERMS</u> Season 1: \$3,000.00 Season 2: \$3,500.00 Season 3: \$4,000.00 Season 4: \$4,500.00			
<u>INSURANCE REQUIREMENTS</u> See Section 19 of the attached General Provisions.		<u>BROKER</u>	
<u>SECURITY DEPOSIT:</u> \$1,225.00		<u>JC NUMBER & DATE RECEIVED</u>	
<u>OTHER TERMS & CONDITIONS:</u> Please see the attached general provisions, which are incorporated herein, before signing. Also, please note that a payment schedule and approved price list will be sent to the Permittee upon Notice to Proceed.			
TERMS ACCEPTED BY _____ (Sign & Print)		TITLE _____	
ISSUED BY _____ (Sign & Print)		DATE _____	

1. DEFINITIONS This document shall be referred to as "Permit". The named person to whom this Permit is issued and who signs this Permit to operate this tennis concession shall be referred to in this document as "Permittee" or "Concessionaire". The City of New York shall be referred to as "City" and the New York City Department of Parks & Recreation shall be referred to as "Parks". "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or her designee. "Comptroller" shall mean the Comptroller of the City of New York. The area to which Permittee is assigned under this Permit shall be referred to as the "Premises" or "Tennis Courts". The Premises is more fully described in the cover sheet hereinafter referred to as the "Cover Page", attached hereto and made a part hereof. The period between the Commencement Date and the Expiration Date set forth on the Cover Page shall be referred to as the "Term."

2. TRANSFERS This Permit is issued solely to the Permittee on the basis of statements Permittee submitted in its Bid or Proposal. Permittee shall not sell, transfer, assign or sublicense this Permit or allow anyone else or any other entity to operate the concession under this Permit without Parks' written consent.

3. IDENTIFICATION AND ADDRESS Permittee shall provide proof of its identification and address by submitting acceptable documentation such as a government issued photo ID, current utility bills, bank statements or rental/lease agreements, or a certificate of incorporation to Parks. Documents listing a post office box or commercial receiving agency as the mailing address shall not meet the requirements of this section 3. . Permittee shall notify Parks immediately of any change in either Permittee's address or phone number as set forth on the Cover Page.

4. ASSUMPTION OF RISK In accepting this Permit, Permittee assumes all the risks involved in operating this concession as described on the Cover Page. Permittee represents that Permittee has inspected the Premises and found it suitable for Permittee's purpose and in operating condition. Subject to Parks' prior written approval, Permittee shall perform any improvements and repairs deemed necessary by Permittee, at Permittee's sole cost and expense. Permittee shall maintain or cause to be maintained total security within the Premises and shall cooperate with Parks to ensure security of surrounding parkland. Permittee shall provide adequate security at all times for Permittee's equipment, products and personnel.

5. SCOPE OF PERMIT Parks authorizes Permittee to operate this concession granted under this Permit in accordance with the terms and conditions set forth herein and with the description of the concession set forth on the Cover Page. Permittee shall provide only tennis instruction as approved by Parks. The sale of food, tennis wear, equipment or supplies is strictly prohibited.

Parks will designate only one court at each site for teaching use. This court must be available to the public when no lessons are scheduled. Any request for a change in court designation is subject to Parks' prior written approval. Parks reserves the right to restrict the number of hours used for teaching.

Permittee expressly understands that no land, building, space, equipment, property or other proprietary right or interest is leased or otherwise conveyed by this Permit. Permittee acknowledges that it will be using the Premises based solely on its own investigation, that the City has not made any representations, warranties or statements concerning the fitness thereof, and that Permittee accepts it for its use in its present condition "as is."

6. PRICE LISTS All items and prices are subject to Parks' prior written approval. Permittee shall conspicuously display a price list identical to the one that Parks has reviewed and approved in writing and charge no more for the services Permittee sells than the posted, approved amounts. Permittee shall not add items of service to Permittee's approved list of fees without Parks' prior written permission.

Parks has set the following maximum rates, which will be effective at the start of the 2024 season. Parks reserves the right to regulate the maximum rates for tennis instruction. Any increases in the rates shall require Parks' prior written approval.

Category	Professional	Head Professional
Half Hour	\$40.00	\$45.00
Full Hour	\$65.00	\$70.00
Full Hour Group Lessons for Two	\$40.00 per person	\$45.00 per person
Full Hour Group Lessons for Three or More	\$32.00 per person	\$38.00 per person

7. OPERATIONS

(a) Permittee shall operate a high-quality tennis instruction concession for the use and enjoyment of the public and in such manner as the Commissioner of Parks (the Commissioner) shall prescribe and in accordance with the operation plan, and hours of operation as set forth in **Exhibit B** attached hereto and made a part of this Permit. Changes in the hours of operation and tennis instruction fees are subject to Parks' prior written approval. The Commissioner retains the right, throughout the Term of this Permit, to approve or disapprove any and all rates, fees and prices to be charged by Permittee for any services provided pursuant to the operation of this Permit.

AGREED TO: _____
Permittee's Signature

Date

(b) Permittee, at its sole cost and expense, shall obtain and maintain all necessary approvals, licenses and permits that are required to operate this concession in accordance with all City, state, and federal laws.

(c) Permittee shall provide and conspicuously post an appointment sign-up sheet in a location approved by Parks, which must be made available for Parks' inspection.

(d) Permittee shall carry a photo identification card at all times during the operation of this Permit.

(e) Subject to Parks' prior written approval, Permittee may erect, at its sole cost and expense, a net to divide the assigned teaching court from other courts available to the public to prevent balls from the teaching court to interfere with play on adjacent courts. Permittee will be required to remove the netting at the end of each season.

(f) Subject to Parks' prior written approval, Permittee may use, at its sole cost and expense, no more than one (1) low-noise motor tennis ball machine to conduct tennis lessons at the Permitted Premises.

(g) To ensure Parks' satisfaction with Permittee's compliance as required herein, Permittee shall provide Parks with full and free access to the Permitted Premises.

(h) Permittee may at its option, during the tennis season volunteer time to provide free clinical instruction in Parks' Youth tennis program.

(i) Permittee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of Parks. The display or placement of tobacco electronic cigarette, and/or non-tobacco smoking product advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks. Advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Permittee will be prohibited from placing advertisements on the exterior of its concession area. Any prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks at Permittee's sole cost and expense.

8. EXPANDING INSTRUCTION SPACE Permittee is authorized to have only the equipment approved by Parks and incidental to the operation of the Permit. Permittee shall not keep additional racks, stands, carts or displays adjacent to the Premises.

This Permit does not grant Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Moreover, Parks may grant other permits to other instructors to provide the same or similar tennis instruction within the same park in which the Premises are located.

Permittee shall maintain close liaison with Parks' Enforcement Patrol ("PEP"), NYPD, and other police officials, and shall reasonably cooperate with all efforts to remove illegal vendors from the Permitted Premises and adjacent areas.

9. FREE ACCESS Permittee shall not block any sidewalk, pathway, park entrance or other pedestrian walkway with Permittee's equipment or supplies. Permittee shall place Permittee's equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times. Permittee shall cooperate with Parks during special events and other unanticipated eventualities.

10. TERMINATION Parks may terminate this Permit at any time if Permittee does not comply with the terms of this Permit or for any reason. Permittee will be given a written termination notice should the City and/or Parks desire to terminate the Permit, such termination to be immediately effective upon the mailing, delivery by hand or facsimile thereof. Permittee expressly waives any and all claims against the City and Parks for losses and or damages Permittee may suffer in the event of termination.

11. TERMINATION AND REMOVAL Upon the expiration, or sooner termination of this Permit, Permittee shall immediately cease all operations under this Permit and shall vacate the Premises without any further notice by Parks and without resort to any judicial determination regarding termination of this Permit. Parks reserves the right to take immediate possession of the Premises.

Permittee shall, on or before the expiration or termination date, remove all Permittee's personal property from the Premises. Any personal property remaining on the Premises after the expiration, or sooner termination, of this Permit, shall be deemed abandoned by Permittee. Permittee shall remain liable to Parks for any damages, including lost revenue to Parks and the cost of removal or disposal of personal property left at the Premises by Parks should Permittee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date. Permittee shall, on or prior to the expiration or sooner termination of this Permit, return to Parks any Permit stickers issued to Permittee by Parks.

AGREED TO: _____
Permittee's Signature

Date

12. **TREES** Permittee is prohibited from cutting down, pruning or removing any trees on the Premises. Any attachments to trees, including but not limited to lights, are not permitted.

13. **EQUIPMENT** Permittee shall maintain the Premises and equipment incidental to the operation of the concession, in clean, good operating condition.

14. **DISABLED ACCESS** The Permittee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Permittee shall comply with all New York City, state and federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Permittee is encouraged to meet and exceed the minimum accessibility requirements whenever possible.

15. **NO TOBACCO/ALCOHOL** The selling and/or advertisement of cigarettes, cigars, electronic cigarettes, any other tobacco products, non-tobacco smoking products, or alcohol is strictly prohibited. In addition, smoking anywhere on the Premises is strictly prohibited except in parking lots or on sidewalks along the park perimeter. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this Section 15.

16. **PARKS RULES & REGULATIONS** Permittee shall comply with Parks' rules and regulations governing use of the Tennis Courts. Permittee shall be exempt from the current rule that only six (6) balls may be used on a tennis court.

This Permit is issued to Permittee for the sole purpose of conducting tennis instructions at the Premises. Tennis pupils are not required to obtain a Parks' tennis Permit for tennis instruction.

Permittee shall not use this Permit for personal tennis play at the Premises or at any other municipal tennis courts. Permittee shall obtain a tennis play permit for personal tennis play at the Premises and all other municipal tennis courts.

Information regarding Parks tennis Permits may be found at: <http://www.nycgovparks.org/permits/tennis-permits>

All tennis instructors or professionals are required to have a current teaching certification from either the United States Professional Tennis Association (USPTA), United States Tennis Association (USTA) the Professional Tennis Registry (PTR), or equivalent accreditation as determined by Parks. All tennis instructors or professionals, including independent contractors and sublicensees, must have training and experience in tennis instruction meeting standards that are satisfactory to Parks. This must include, but is not limited to, a tennis teaching certification as required above.

17. **SECURITY DEPOSIT** Permittee's security

deposit, the dollar amount as set forth on the Cover Page of this Permit, will be held, without liability for the City to pay interest thereon, to ensure that Permittee fulfills all the terms and conditions of this Permit. The Security Deposit shall consist of cash, a certified check payable to the City of New York, or an irrevocable letter of credit naming the City of New York as beneficiary or other negotiable instrument payable to the City of New York, which the Comptroller shall approve, as being of equal market value with the sum so required. Permittee may collect or receive annually any interest or income earned on such negotiable instrument less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing accounts. If Permittee fails to perform any of the terms and conditions of this Permit, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, appropriate and apply the security deposit or as much as is required to compensate the City toward (a) the payment of sums due from the Permittee or (b) towards any loss, damage or expense sustained by the City resulting from such default on the part of Permittee. If Permittee fails to make timely fee payments, Permittee's security deposit may be seized. If Permittee operates without insurance or in a location in the Park other than the Premises or at times not authorized by this Permit, Parks may also seize Permittee's security deposit. If Permittee causes any damage to Parks property, the security deposit may also be used to pay for the repairs. If part of Permittee's security deposit is used for any purpose, Permittee shall replace that sum within thirty (30) days of Parks' appropriation of such sum. Failure to replace such sum as required herein may result in the termination of this Permit. Permittee is responsible for any costs beyond those covered by the security deposit. If Permittee ceases Permittee's operations at the Premises prior to the termination of this Permit, Parks may seize Permittee's security deposit.

18. **LATE PAYMENTS** A late charge may be assessed for any fee payment not received by Parks on or prior to the payment dates specified in this Permit. A late charge of two percent (2%) per month may be applied to any unpaid balance that is overdue for ten (10) days following the date for which such fees are due. For example, a monthly payment, in the amount of \$1,000.00, due on the 1st day of the month must be received no later than the 10th day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11th day of the month.

19. **INSURANCE** Insurance must be in place throughout the entire of the Permit.

(a) Permittee shall maintain Commercial General Liability ("CGL") insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily

AGREED TO: _____
Permittee's Signature

Date

injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury, and **if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to each permit location and the per-location aggregate shall be at least Two Million Dollars (\$2,000,000).** If Permittee intends to use any independent contractors to teach on its court, Permittee’s CGL policy must cover the independent contractor’s activity. This insurance shall protect the insureds from claims that may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of Parks and shall be “occurrence based” rather than “claims-made”. **Such CGL insurance shall name the City, together with its officials and employees and any entity as required by the Park location indicated on the Permit Cover; Section D(4) of the RFB solicitation # CWTP-2024, or otherwise required by Parks, including that entity’s volunteers, officials and employees (collectively, the “Indemnitees”, each, an “Indemnitee”) as an Additional Insured** with coverage at least as broad as the most recent edition of ISO Form CG 20 26, and the additional insureds’ limits will be no lower than Permittee’s. Such CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by any Indemnitee. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the Indemnitees’ status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. Permittee must submit proof of valid Workers’ Compensation Insurance, Employer’s Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C-105.2; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers’ Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers’ Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker’s Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

(c) If vehicles are to be used in connection with Permittee’s operations, Permittee shall carry Commercial Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If Permittee does not provide proof of compliance with this requirement, no vehicular use will be permitted within Parks boundaries.

(d) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(e) All Insurance Certificates shall be accompanied by either a duly executed “Certification by Broker” satisfactory to the Commissioner in form and substance or completed copies of all policies referenced in the Insurance Certificate. Upon Parks and/or the New York City Law Department’s request at any time during the Term of this Permit, Permittee shall provide Parks with a copy of the insurance policy and proof of its insurance coverage.

(f) For each policy required under this Permit, except for Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee’s general liability policy by which the City has been made an additional insured pursuant to Section 19(a). All Certificate(s) of Insurance shall be accompanied by either a duly executed “Certification by Insurance Agent or Broker” in the form attached as **Exhibit C** or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(f) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section. Such Certificates of Insurance shall comply with the requirements of this Section, as applicable.

(g) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(h) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

20. INDEMNIFICATION AND HOLD HARMLESS

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

(b) Permittee shall be solely responsible for taking all

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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 Permit.

(c) Permittee 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 Permit, whether or not due to the negligence of Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors or any other person.

(d) Permittee shall use the premises in compliance with, and shall not cause or permit the premises to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the Courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Permittee or the premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Permit, Permittee shall not cause or permit, or allow any of Permittee'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.

(e) Permittee is personally responsible for any claims made by either any employee or member of the public against Permittee or the City (including its officials and employees) arising from the operation of this Permit.

(f) Permittee assumes all risks in Permittee's operation under this Permit. To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the Indemnitees harmless against any and all claims (even if the claims are without merit), 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 Permit and/or Permittee's failure to comply with the law or any of the requirements of this Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Permittee, the City and its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

(g) Permittee's obligation under this Section shall not be affected in any way by the absence or lapse in any case of covering insurance or by the failure or refusal of any insurance policies affecting the Premises.

(h) If any claim, action or proceeding is made or brought against the City or Parks, pertaining to this Permit,

Permittee at Permittee's sole cost and expense, shall resist or defend such claim, action or proceeding.

(i) The City may arrange for their own defense and the defense of their officials and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may at any time thereafter, tender their further defense to Permittee, without any prejudice to any rights to which they, or any of them, may be entitled to under Section 20(f), including the right to be indemnified and held harmless, as therein provided.

(j) Permittee's duty to defend, indemnify and hold harmless the Indemnitees, as provided in section 20(f), shall not be abrogated, diminished or otherwise affected by Permittee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 19 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this Permit.

(k) The provisions of this Section and all other indemnity provisions of this Permit shall survive the expiration date or sooner termination of this Permit with respect to any liability, suits, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or in connection with any action or failure to take action or any other matter occurring prior to the expiration date of this Permit.

(l) In the event any person or property is injured or damaged due to collapse, breakage, failure, malfunction or misuse of any building(s), structure(s), equipment, apparatus, or materials, of any sort, associated with or used by Permittee or its agents pursuant to the operation of this Permit, regardless of whether such injury or damage occurred on the Premises, Permittee shall indemnify the Indemnitees from any and all claims (even if the claim is without merit), liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of such injury or damage.

21. STORAGE Parks make no representation that there is adequate storage at the Permitted Premises. Permittee at its sole cost and expense shall obtain any off-site storage space required for the operation of this concession. Unless Permittee is specifically authorized in writing to use a Parks building or facility, Permittee shall not store any equipment or supplies on Parks' property. No item, equipment or supplies shall be placed upon any public space, including the ground adjacent to the Premises without Parks' prior written approval.

Permittee shall secure the concession and any other equipment every evening at the close of business and any other time that the concession is closed. Following each day of operation, the Permittee shall remove all personal property and equipment from public view. The Permittee

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shall supply all equipment necessary to operate the concession authorized herein.

22. RESERVED.

23. FIXED EQUIPMENT The Commissioner represents that City has title to all equipment and fixtures located at the Premises. Title to any construction, renovation, or improvements made to the Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option Permittee shall remove such items at its sole cost and expense and restore the Premises to its original condition and to Parks' satisfaction.

24. RECORDS OF SALES Permittee shall maintain records of the following information in a form suitable for audit by Parks or the City Comptroller's Office:

(a) Sales or service activities from this concession recorded separately from any other businesses that may be operated by the Permittee.

(b) Sales information must be posted daily in a formal set of books or records of account.

(c) Cash receipts from the operation under this Permit must be deposited regularly in a separate bank account located in New York City and reconciled with the sales reports.

(d) Related records of the operation authorized hereunder shall be retained for a period of at least ten (10) years from the expiration or sooner termination of this Permit.

(e) Permittee shall pay all taxes applicable to the operation of the concession.

25. INTERNAL CONTROLS Throughout the Term, Permittee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. Permittee must also establish a dedicated bank account for all deposits related to this concession's revenue. All fees, prices and any subsequent increases require Parks' prior written approval. Permittee shall maintain all accounting and internal control-related records for a minimum of ten (10) years from the date of creation of the record.

26. STATEMENT OF GROSS RECEIPTS & INCOME At Parks request, the Permittee shall submit a seasonal statement of gross receipts from all categories of income derived under this Permit and in accordance with the operation plan and hours of operation as set forth in **Exhibit B** attached hereto in a format approved in writing by Parks. In addition, the Permittee shall have available,

for review at Parks' request, monthly statements of gross receipts, as well as a detailed income and expense statement for the past year's operation.

Permittee shall pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state or city taxes, which are paid by the Permittee.

27. AUDIT Permittee shall make available to the office of The Comptroller of the City of New York, or Parks' auditor, on demand, all books, records, documents and correspondence pertaining to this Permit, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York or the Commissioner of Parks.

28. TAXES Permittee is responsible for obeying all relevant laws, rules and regulations and obtaining all necessary permits and licenses. Permittee shall obtain and provide to Parks a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other applicable taxes. If the Premises are in the Borough of Manhattan, south of 96th Street, the Permittee shall pay the New York City Commercial Rent or Occupancy taxes.

29. NOTICE TO CURE Permittee shall comply with all directions and instructions Parks issues to Permittee. Permittee understands that failure to comply with any such directive or with any of the provisions of this Permit within ten (10) days or any shorter period set forth in any directive may result in the suspension and/or termination of this Permit. Parks may impose a Two Hundred and Fifty Dollars (\$250.00) administrative fee for reinstatement of a suspended Permit.

30. SUSPENSION This Permit may be suspended for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice of suspension, Permittee shall not operate. In the event that Permittee's business is disrupted due to construction in the park where the Premises is located, this Permit may be suspended, at Parks' option. If the suspension is related to Parks' construction, Parks in its sole discretion may extend the Term of this Permit by the amount of time Permittee was prevented from operating due to such construction.

31. NO EXCLUSIVE VENDING RIGHTS This Permit does not grant the Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Parks may grant other permits to instructors to provide tennis instruction authorized under the Permit within the same park in which the Premises are located. Permittee acknowledges and understands that Parks does not guarantee that illegal vendors or disabled veteran vendors or persons unauthorized by Parks will not compete with Permittee near the Premises.

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32. OTHER PERMITS A New York City Department of Parks and Recreation Vendor’s license is **NOT** a substitute for a Consumer Affairs or a Department of Health license. For many locations, and for many types of concessions, more than one license or permit may be required. Without **ALL** necessary licenses or permits, Permittee may be fined, Permittee’s items may be confiscated and Permittee may be prevented from operating. Permittee shall check for license/permit requirements with the following appropriate department:

**New York City Department of Consumer Affairs
80 Lafayette Street
New York, NY 10013
(212) 487-4444**

33. SPECIAL EVENTS Permittee shall cooperate with Parks during special events and other unanticipated eventualities. It is expressly understood that this Permit shall in no way limit Parks' right to sponsor or promote Special Events or to enter into agreements with third parties to sponsor or promote such events. Parks reserves the right to delay concession activities, relocate the Permittee from the Premises or suspend operations under the Permit in the event that such Special Event occurs within the Premises. Enforcement of security directives may also restrict vehicular access to the park, roadways and concession site. Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and cleanup of the Premises associated with any such Special Event.

34. PERMIT/SIGNAGE DISPLAY Permittee shall conspicuously display, at all times, rates for tennis instructions, the 311 sign with the Parks’ leaf logo, this Permit, and/or any other permit, license, sticker or identification issued to Permittee by Parks, the City or any other governmental agency. Parks will issue Permittee a new decal at the beginning of each season of the Permit term, provided that Permittee is in compliance with the terms and conditions hereof. Permittee shall be subject to a One Hundred Dollar (\$100) fee to replace lost decals.

35. NO DISCRIMINATION Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, or any other protected class of individuals as defined by City, state or federal laws, rules or regulations. As used herein, the term “employment” shall mean and include, without limitation, the following: recruited, whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, downgraded, transferred, laid off, and terminated. Any violation of this paragraph shall be deemed a material breach of this Permit for which it may be terminated or suspended.

36. INSPECTIONS AND LIQUIDATED DAMAGES

Upon signing the Permit, Permittee agrees that Parks Inspectors and/or Park Enforcement Officers may confiscate any and all material found to be outside of the vending location. If material is stored or displayed outside of the vending location, all expenses associated with enforcement of this requirement will be reimbursed by Permittee to the City. Permittee shall reimburse the City within thirty (30) days of receipt of a written request.

Permittee agrees that any failure to perform requirements to such standard as set forth herein shall result in injuries to the City and its residents, businesses, and institutions, the compensation for which will be difficult to ascertain.

Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, Parks may issue directives regarding deficiencies the Permittee will be obligated to rectify in a timely fashion. Violations of the terms of the Permit Agreement may result in the assessment of liquidated damages, which, if not paid promptly, may be deducted, from the Permittee’s security deposit.

Accordingly Permittee agrees that notwithstanding any other remedy at law to ensure Permittee’s compliance with the provisions of this Permit, the liquidated damages in the amounts set forth herein below are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. If Permittee fails to provide the required cleaning, maintenance, and operational services, Parks shall notify the Permittee in writing, and the Permittee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Permittee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the Permit. Parks may impose a Two Hundred and Fifty Dollar (\$250) administrative fee for reinstatement of a suspended Permit. Liquidated damages may be assessed in accordance with the following schedule:

<u>Provision</u>	<u>Liquidated Damage Per Occurrence</u>
Unauthorized instruction	\$150
Missing or unauthorized price list	\$250
Overcharging	\$350
Expanding	\$350
Blocked exits/Paths/Roadways/ Vehicles on Sidewalks	\$350
Unauthorized Vehicular Activity	\$350

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Improper disposal (Noxious liquids, Debris, etc.)	\$350
Graffiti, dirty Premises	\$350
Unauthorized Advertising	\$350
Roving or instructing at Unauthorized Location	\$250
Improper storage	\$350
Damage to Parks Property (e.g., Trees, Fencing, Hex Pavement)	\$350
Sticker Expired or not displayed	\$250
311 sign not displayed	\$250
Unauthorized tapping into utilities used, operated or owned by the City	\$350

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply with the requirements set forth herein. If Permittee fails to pay liquidated damages to Parks within ten (10) days of receipt of notice, this Permit may be suspended or terminated. In addition, Parks may seize Permittee’s security deposit, described in Section 17 herein, to cover the amounts of any outstanding payments for liquidated damages. If Permittee receives an assessment for one of the above violations, there is a process by which such assessment may be appealed, as described below, if Permittee believes that the assessment has been assessed in error.

Filing an Appeal

- A. If the concessionaire 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 Permittee believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Permittee’s appeal (such as photographs, documents, and witness statements) 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 Permittee’s account.

Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning (“OMP”), whose office is located at The Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of OMP to decide on the merits of these appeals. The decision of the Director of OMP shall

constitute the final decision of NYC Parks & Recreation.

- B. The Director of OMP is authorized to investigate the merits of the appeal, but is not required either to hold a hearing or to speak to Permittee in person.

37. INSPECTIONS AND INVESTIGATIONS

(a) Permittee shall allow the Commissioner, his or her representatives or any other City, State or Federal official having jurisdiction with photo identification to inspect the Premises which Permittee operates at any time.

(b) The parties to this Permit 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.

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

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

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

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

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, Permits or licenses that the refusal to testify concerns and that have not been assigned as Permitted under this Permit, 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.

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

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

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

(iii) The nexus of the testimony sought to the subject 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 (e) 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 (d) (i) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

(ii) The “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.

(h) (i) In addition to and notwithstanding any other provision of this Permit the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days’ written notice in the event Permittee 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 Permittee, or affecting the performance of this Permit Agreement.

38. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE This Permit shall be deemed to be a contract (“Contract”) executed in the City of New York, State of New York, regardless of Permittee’s domicile, and shall be governed by and construed in accordance with the laws of the State of New York. Permittee agrees that any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York (“Federal Courts”) or in the courts of the States of New York (“New York State Courts”) located in the City and County of New York. To effect this agreement and intent, Permittee agrees to the following:

(a) If the City initiates any action against the

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Permittee in Federal Court or in New York State Court, service of process may be made on the Permittee either in person, wherever such Permittee may be found, or by registered mail addressed to the Permittee at its address as set forth in this Permit, or to such other address as the Permittee may provide to the City in writing; and

(b) With respect to any action between the City and the Permittee in New York State Court, the Permittee 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.

(c) With respect to any action between the City and the Permittee in Federal Court located in New York City, the Permittee expressly waives and relinquishes any right it might otherwise have more to transfer the action to a United States Court outside the City of New York.

(d) If the Permittee 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 Permittee 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 Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision of this Section is held unenforceable for any reason, each and every other provision shall nevertheless remain in full force and effect.

Permittee waives trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other in any matter related to this Permit.

39. PROCUREMENT OF AGREEMENT Permittee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Permittee 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. Permittee makes such representations and warranties to induce the City to enter into this Permit and the City relies upon such representations and warranties in the execution hereof.

For a breach of violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and the Permittee shall not make any claim for, or be entitled to recover, any sum or sums due under this Permit. 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 for by law or pursuant to this Permit.

40. CUMULATIVE REMEDIES - NO WAIVER The specific remedies to which the City may resort under the terms of this Permit are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

41. SEVERABILITY; INVALIDITY OF PARTICULAR PROVISIONS If any term or provision of this Permit or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and enforceable to the fullest extent permitted by law.

42. CONFLICT OF INTEREST. Permittee 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. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Permit which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Permit or in the proceeds thereof.

43. JUDICIAL INTERPRETATION. Should any provision of this Permit 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

44. INDEPENDENT STATUS OF PERMITTEE.
(a) Permittee is not an employee of Parks or the City and

AGREED TO: _____
Permittee's Signature

Date

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

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

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

46. PRIOR UNDERSTANDING; NO ORAL MODIFICATION. This Permit states the entire and integrated agreement between the City and Permittee and supersedes all prior negotiations, representations and agreements, whether written or oral. This Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and Permittee.

47. MARKETING AND SPONSORSHIP AGREEMENTS. Permittee must obtain the prior written approval of Parks prior to entering into any

marketing or sponsorship agreement. In the event Permittee breaches this requirement, City shall take any action that the City may deem necessary to protect the City's interest.

48. PAYMENT AND NOTICE. Any Permit fees, charges or sums payable by Permittee to Parks shall be made to the New York City Department of Parks & Recreation, Revenue Division, The Arsenal - Room 407, 830 Fifth Avenue, New York, NY 10065.

Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery, facsimile, or by mailing a copy of such notice by mail addressed to Commissioner of Parks at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and to the attention of Permittee at its address set forth on the Cover Page, or to any other address that Permittee shall have filed with Commissioner.

49. REIMBURSEMENT OF CITY. Permittee shall, within thirty (30) days of receipt of a written request, reimburse City and Parks for all costs incurred by City or Parks in assisting Permittee to comply with this Permit or in rectifying any non-compliance by Permittee with the terms and conditions hereof.

NYC Parks may require that the City own the portion of any name selected by Permittee for use at the Premises that indicates NYC Parks' property or a preexisting facility name or otherwise contains any City IP. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with NYC Parks' property. Permittee may use the name "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" in connection with its operations under this Permit only to identify the location of the Premises, and any other uses of "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" or any other City IP may be only pursuant to a separate written agreement between the City and Permittee.

50. EARNED SAFE AND SICK TIME ACT. Permittee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as set forth in the NYC Earned Safe and Sick Time Act Concession Agreement Rider attached hereto as **Exhibit A.**

AGREED TO: _____
Permittee's Signature

Date

EXHIBIT A**NYC EARNED SAFE and SICK TIME ACT CONCESSION AGREEMENT 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) 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 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.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time

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

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 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.

EXHIBIT B

OPERATING HOURS AND COURT ASSIGNMENT FORM

Tennis Pro Name: _____

Park: _____

Permit #: _____

Hours of Operation:

Monday: _____

Tuesday: _____

Wednesday: _____

Thursday: _____

Friday: _____

Saturday: _____

Sunday: _____

Court Assignment:

What tennis court are you assigned to when you are conducting tennis lessons?

EXHIBIT C:

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.

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 _____

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 6)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Parks and Recreation ("Parks") pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Zurab Tskhakaia for the Operation of Tennis Professional Concessions at Dyker Beach Park, Brooklyn, NY. The agreement will provide for a 4-year term. Compensation to the City will be Annual Fee(s): Season 1: \$3,000.00 Season 2: \$3,500.00 Season 3: \$4,000.00 Season 4: \$4,500.00

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Citywide Tennis Professionals Concession ID CWTP-2024 B51-TP

Description For the Operation of Tennis Professional Concessions at Various Locations Citywide Agency New York City Department of Parks and Recreation ("Parks")

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Eric Jordan Telephone 718-404-8737

Address 336 East 91 Street EIN or SSN # 052684292

Brooklyn, NY, 11212 Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 11/24/2028 Concession Site(s) Yes No

Renewal Option(s) _____ to _____ Address William E. Kelly Memorial Park

_____ to _____ Btwn East 14th & East 15th Streets

Total Potential Term 5 years Borough BROOKLYN Community Board 15

>20 years – FCRC unanimously approved term on ____/____/____ Block# 6820 Lot# 23

Recommended Annual Revenue

(Check all that apply)

Annual Fee(s) \$ _____

Gross Receipts _____ %

The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts

Other Additional information

Notice Requirements

Please indicate below how the Notice of Intent to Enter into Negotiations was publicized:

REQUIRED At least 5 successive issues of the City Record, from 06/18/24 to 06/25/24 (the last of which was no fewer than 10 days before negotiations were expected to begin)

REQUIRED Published on the City's website on 06/18/24 (the same day it was first published in City Record)

Award is a Major Concession

Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

CPC approved on ____/____/____

City Council approved on ____/____/____

N/A

No

Negotiation Requirements

The due date for proposers to respond to the Notice of Intent to Enter into Negotiations was: 07/22/24 at 5:00 AM PM

2 potential concessionaires responded by that time.

Please select the appropriate option below

The agency negotiated with all qualified potential questionnaires that had expressed interest,

OR;

The agency determined that it was in the best interest of the City to negotiate with fewer potential questionnaires, and the CCPO approved such determination on ____/____/____. Negotiations were conducted with ____ potential concessionaires

Please describe the negotiation process conducted, including any Best and Final Offers ("BAFOs") requested:

Parks had video conference calls with proposers, offers and proposals were received, and proposals were reviewed.

The agency certifies that the concession manager has maintained a written record of the conduct of negotiations and the basis for every determination to continue/suspend negotiations with each potential concessionaire

Rule 1-14: Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: ____/____/____

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ____/____/____ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on 11/13/24 (date of the FCRC public meeting)

Votes in favor: _____ Votes against: _____

OR

The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

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

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

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

Signature _____ Date _____

City Chief Procurement Officer

ADDITIONAL INFORMATION

For Agency Use With Concession Forms

Citywide Tennis Professionals

CWTP-2024 B51-TP

Concession Title _____ **Concession ID** _____

Description For the Operation of Tennis Professional Concessions at Various Locations Citywide **Agency** New York City Department of Parks and Recreation ("Parks")

Season 1 (2024): \$5,000.00
Season 2 (2025): \$5,500.00
Season 3 (2026): \$6,250.00
Season 4 (2027): \$6,500.00
Season 5 (2028): \$6,750.00

APPROVAL AS TO FORM OF A PERMIT BY STANDARD TYPE OF CLASS

AGENCY: DEPARTMENT OF PARKS AND RECREATION

PERMIT: TEMPLATE VENDOR PERMIT FOR THE OPERATION OF TENNIS
PROFESSIONAL CONCESSIONS AT VARIOUS LOCATIONS CITYWIDE

SOLICITATION: CWTP-2024

I hereby approve as to form and certify as to legal authority the annexed “Tennis Professional Concession” vendor permits by standard type of class. This approval is valid for a period of one (1) year from the date hereof and for a maximum of thirty (30) permits. The above approval is made on the express understanding that the substantive language of the subject permits will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the permits requiring names, dates, locations, dollar amounts, or other similar details may be completed.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Isabel Galis-Menendez

ACTING CORPORATION COUNSEL YHW

DATE: 8/27/2024

LM # 2024-062529

1. DEFINITIONS This document shall be referred to as "Permit". The named person to whom this Permit is issued and who signs this Permit to operate this tennis concession shall be referred to in this document as "Permittee" or "Concessionaire". The City of New York shall be referred to as "City" and the New York City Department of Parks & Recreation shall be referred to as "Parks". "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or her designee. "Comptroller" shall mean the Comptroller of the City of New York. The area to which Permittee is assigned under this Permit shall be referred to as the "Premises" or "Tennis Courts". The Premises is more fully described in the cover sheet hereinafter referred to as the "Cover Page", attached hereto and made a part hereof. The period between the Commencement Date and the Expiration Date set forth on the Cover Page shall be referred to as the "Term."

2. TRANSFERS This Permit is issued solely to the Permittee on the basis of statements Permittee submitted in its Bid or Proposal. Permittee shall not sell, transfer, assign or sublicense this Permit or allow anyone else or any other entity to operate the concession under this Permit without Parks' written consent.

3. IDENTIFICATION AND ADDRESS Permittee shall provide proof of its identification and address by submitting acceptable documentation such as a government issued photo ID, current utility bills, bank statements or rental/lease agreements, or a certificate of incorporation to Parks. Documents listing a post office box or commercial receiving agency as the mailing address shall not meet the requirements of this section 3. . Permittee shall notify Parks immediately of any change in either Permittee's address or phone number as set forth on the Cover Page.

4. ASSUMPTION OF RISK In accepting this Permit, Permittee assumes all the risks involved in operating this concession as described on the Cover Page. Permittee represents that Permittee has inspected the Premises and found it suitable for Permittee's purpose and in operating condition. Subject to Parks' prior written approval, Permittee shall perform any improvements and repairs deemed necessary by Permittee, at Permittee's sole cost and expense. Permittee shall maintain or cause to be maintained total security within the Premises and shall cooperate with Parks to ensure security of surrounding parkland. Permittee shall provide adequate security at all times for Permittee's equipment, products and personnel.

5. SCOPE OF PERMIT Parks authorizes Permittee to operate this concession granted under this Permit in accordance with the terms and conditions set forth herein and with the description of the concession set forth on the Cover Page. Permittee shall provide only tennis instruction as approved by Parks. The sale of food, tennis wear, equipment or supplies is strictly prohibited.

Parks will designate only one court at each site for teaching use. This court must be available to the public when no lessons are scheduled. Any request for a change in court designation is subject to Parks' prior written approval. Parks reserves the right to restrict the number of hours used for teaching.

Permittee expressly understands that no land, building, space, equipment, property or other proprietary right or interest is leased or otherwise conveyed by this Permit. Permittee acknowledges that it will be using the Premises based solely on its own investigation, that the City has not made any representations, warranties or statements concerning the fitness thereof, and that Permittee accepts it for its use in its present condition "as is."

6. PRICE LISTS All items and prices are subject to Parks' prior written approval. Permittee shall conspicuously display a price list identical to the one that Parks has reviewed and approved in writing and charge no more for the services Permittee sells than the posted, approved amounts. Permittee shall not add items of service to Permittee's approved list of fees without Parks' prior written permission.

Parks has set the following maximum rates, which will be effective at the start of the 2024 season. Parks reserves the right to regulate the maximum rates for tennis instruction. Any increases in the rates shall require Parks' prior written approval.

Category	Professional	Head Professional
Half Hour	\$40.00	\$45.00
Full Hour	\$65.00	\$70.00
Full Hour Group Lessons for Two	\$40.00 per person	\$45.00 per person
Full Hour Group Lessons for Three or More	\$32.00 per person	\$38.00 per person

7. OPERATIONS

(a) Permittee shall operate a high-quality tennis instruction concession for the use and enjoyment of the public and in such manner as the Commissioner of Parks (the Commissioner) shall prescribe and in accordance with the operation plan, and hours of operation as set forth in **Exhibit B** attached hereto and made a part of this Permit. Changes in the hours of operation and tennis instruction fees are subject to Parks' prior written approval. The Commissioner retains the right, throughout the Term of this Permit, to approve or disapprove any and all rates, fees and prices to be charged by Permittee for any services provided pursuant to the operation of this Permit.

AGREED TO: _____
 Permittee's Signature

 Date

(b) Permittee, at its sole cost and expense, shall obtain and maintain all necessary approvals, licenses and permits that are required to operate this concession in accordance with all City, state, and federal laws.

(c) Permittee shall provide and conspicuously post an appointment sign-up sheet in a location approved by Parks, which must be made available for Parks' inspection.

(d) Permittee shall carry a photo identification card at all times during the operation of this Permit.

(e) Subject to Parks' prior written approval, Permittee may erect, at its sole cost and expense, a net to divide the assigned teaching court from other courts available to the public to prevent balls from the teaching court to interfere with play on adjacent courts. Permittee will be required to remove the netting at the end of each season.

(f) Subject to Parks' prior written approval, Permittee may use, at its sole cost and expense, no more than one (1) low-noise motor tennis ball machine to conduct tennis lessons at the Permitted Premises.

(g) To ensure Parks' satisfaction with Permittee's compliance as required herein, Permittee shall provide Parks with full and free access to the Permitted Premises.

(h) Permittee may at its option, during the tennis season volunteer time to provide free clinical instruction in Parks' Youth tennis program.

(i) Permittee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of Parks. The display or placement of tobacco electronic cigarette, and/or non-tobacco smoking product advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks. Advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Permittee will be prohibited from placing advertisements on the exterior of its concession area. Any prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks at Permittee's sole cost and expense.

8. EXPANDING INSTRUCTION SPACE Permittee is authorized to have only the equipment approved by Parks and incidental to the operation of the Permit. Permittee shall not keep additional racks, stands, carts or displays adjacent to the Premises.

This Permit does not grant Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Moreover, Parks may grant other permits to other instructors to provide the same or similar tennis instruction within the same park in which the Premises are located.

Permittee shall maintain close liaison with Parks' Enforcement Patrol ("PEP"), NYPD, and other police officials, and shall reasonably cooperate with all efforts to remove illegal vendors from the Permitted Premises and adjacent areas.

9. FREE ACCESS Permittee shall not block any sidewalk, pathway, park entrance or other pedestrian walkway with Permittee's equipment or supplies. Permittee shall place Permittee's equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times. Permittee shall cooperate with Parks during special events and other unanticipated eventualities.

10. TERMINATION Parks may terminate this Permit at any time if Permittee does not comply with the terms of this Permit or for any reason. Permittee will be given a written termination notice should the City and/or Parks desire to terminate the Permit, such termination to be immediately effective upon the mailing, delivery by hand or facsimile thereof. Permittee expressly waives any and all claims against the City and Parks for losses and or damages Permittee may suffer in the event of termination.

11. TERMINATION AND REMOVAL Upon the expiration, or sooner termination of this Permit, Permittee shall immediately cease all operations under this Permit and shall vacate the Premises without any further notice by Parks and without resort to any judicial determination regarding termination of this Permit. Parks reserves the right to take immediate possession of the Premises.

Permittee shall, on or before the expiration or termination date, remove all Permittee's personal property from the Premises. Any personal property remaining on the Premises after the expiration, or sooner termination, of this Permit, shall be deemed abandoned by Permittee. Permittee shall remain liable to Parks for any damages, including lost revenue to Parks and the cost of removal or disposal of personal property left at the Premises by Parks should Permittee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date. Permittee shall, on or prior to the expiration or sooner termination of this Permit, return to Parks any Permit stickers issued to Permittee by Parks.

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Permittee's Signature

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12. **TREES** Permittee is prohibited from cutting down, pruning or removing any trees on the Premises. Any attachments to trees, including but not limited to lights, are not permitted.

13. **EQUIPMENT** Permittee shall maintain the Premises and equipment incidental to the operation of the concession, in clean, good operating condition.

14. **DISABLED ACCESS** The Permittee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Permittee shall comply with all New York City, state and federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Permittee is encouraged to meet and exceed the minimum accessibility requirements whenever possible.

15. **NO TOBACCO/ALCOHOL** The selling and/or advertisement of cigarettes, cigars, electronic cigarettes, any other tobacco products, non-tobacco smoking products, or alcohol is strictly prohibited. In addition, smoking anywhere on the Premises is strictly prohibited except in parking lots or on sidewalks along the park perimeter. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this Section 15.

16. **PARKS RULES & REGULATIONS** Permittee shall comply with Parks' rules and regulations governing use of the Tennis Courts. Permittee shall be exempt from the current rule that only six (6) balls may be used on a tennis court.

This Permit is issued to Permittee for the sole purpose of conducting tennis instructions at the Premises. Tennis pupils are not required to obtain a Parks' tennis Permit for tennis instruction.

Permittee shall not use this Permit for personal tennis play at the Premises or at any other municipal tennis courts. Permittee shall obtain a tennis play permit for personal tennis play at the Premises and all other municipal tennis courts.

Information regarding Parks tennis Permits may be found at: <http://www.nycgovparks.org/permits/tennis-permits>

All tennis instructors or professionals are required to have a current teaching certification from either the United States Professional Tennis Association (USPTA), United States Tennis Association (USTA) the Professional Tennis Registry (PTR), or equivalent accreditation as determined by Parks. All tennis instructors or professionals, including independent contractors and sublicensees, must have training and experience in tennis instruction meeting standards that are satisfactory to Parks. This must include, but is not limited to, a tennis teaching certification as required above.

17. **SECURITY DEPOSIT** Permittee's security

deposit, the dollar amount as set forth on the Cover Page of this Permit, will be held, without liability for the City to pay interest thereon, to ensure that Permittee fulfills all the terms and conditions of this Permit. The Security Deposit shall consist of cash, a certified check payable to the City of New York, or an irrevocable letter of credit naming the City of New York as beneficiary or other negotiable instrument payable to the City of New York, which the Comptroller shall approve, as being of equal market value with the sum so required. Permittee may collect or receive annually any interest or income earned on such negotiable instrument less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing accounts. If Permittee fails to perform any of the terms and conditions of this Permit, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, appropriate and apply the security deposit or as much as is required to compensate the City toward (a) the payment of sums due from the Permittee or (b) towards any loss, damage or expense sustained by the City resulting from such default on the part of Permittee. If Permittee fails to make timely fee payments, Permittee's security deposit may be seized. If Permittee operates without insurance or in a location in the Park other than the Premises or at times not authorized by this Permit, Parks may also seize Permittee's security deposit. If Permittee causes any damage to Parks property, the security deposit may also be used to pay for the repairs. If part of Permittee's security deposit is used for any purpose, Permittee shall replace that sum within thirty (30) days of Parks' appropriation of such sum. Failure to replace such sum as required herein may result in the termination of this Permit. Permittee is responsible for any costs beyond those covered by the security deposit. If Permittee ceases Permittee's operations at the Premises prior to the termination of this Permit, Parks may seize Permittee's security deposit.

18. **LATE PAYMENTS** A late charge may be assessed for any fee payment not received by Parks on or prior to the payment dates specified in this Permit. A late charge of two percent (2%) per month may be applied to any unpaid balance that is overdue for ten (10) days following the date for which such fees are due. For example, a monthly payment, in the amount of \$1,000.00, due on the 1st day of the month must be received no later than the 10th day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11th day of the month.

19. **INSURANCE** Insurance must be in place throughout the entire of the Permit.

(a) Permittee shall maintain Commercial General Liability ("CGL") insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily

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injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury, and **if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to each permit location and the per-location aggregate shall be at least Two Million Dollars (\$2,000,000).** If Permittee intends to use any independent contractors to teach on its court, Permittee’s CGL policy must cover the independent contractor’s activity. This insurance shall protect the insureds from claims that may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of Parks and shall be “occurrence based” rather than “claims-made”. **Such CGL insurance shall name the City, together with its officials and employees and any entity as required by the Park location indicated on the Permit Cover; Section D(4) of the RFB solicitation # CWTP-2024, or otherwise required by Parks, including that entity’s volunteers, officials and employees (collectively, the “Indemnitees”, each, an “Indemnitee”) as an Additional Insured** with coverage at least as broad as the most recent edition of ISO Form CG 20 26, and the additional insureds’ limits will be no lower than Permittee’s. Such CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by any Indemnitee. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the Indemnitees’ status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. Permittee must submit proof of valid Workers’ Compensation Insurance, Employer’s Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C-105.2; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers’ Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers’ Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker’s Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

(c) If vehicles are to be used in connection with Permittee’s operations, Permittee shall carry Commercial Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If Permittee does not provide proof of compliance with this requirement, no vehicular use will be permitted within Parks boundaries.

(d) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(e) All Insurance Certificates shall be accompanied by either a duly executed “Certification by Broker” satisfactory to the Commissioner in form and substance or completed copies of all policies referenced in the Insurance Certificate. Upon Parks and/or the New York City Law Department’s request at any time during the Term of this Permit, Permittee shall provide Parks with a copy of the insurance policy and proof of its insurance coverage.

(f) For each policy required under this Permit, except for Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee’s general liability policy by which the City has been made an additional insured pursuant to Section 19(a). All Certificate(s) of Insurance shall be accompanied by either a duly executed “Certification by Insurance Agent or Broker” in the form attached as **Exhibit C** or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(f) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section. Such Certificates of Insurance shall comply with the requirements of this Section, as applicable.

(g) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(h) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

20. INDEMNIFICATION AND HOLD HARMLESS

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

(b) Permittee shall be solely responsible for taking all

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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 Permit.

(c) Permittee 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 Permit, whether or not due to the negligence of Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors or any other person.

(d) Permittee shall use the premises in compliance with, and shall not cause or permit the premises to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the Courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Permittee or the premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Permit, Permittee shall not cause or permit, or allow any of Permittee'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.

(e) Permittee is personally responsible for any claims made by either any employee or member of the public against Permittee or the City (including its officials and employees) arising from the operation of this Permit.

(f) Permittee assumes all risks in Permittee's operation under this Permit. To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the Indemnitees harmless against any and all claims (even if the claims are without merit), 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 Permit and/or Permittee's failure to comply with the law or any of the requirements of this Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Permittee, the City and its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

(g) Permittee's obligation under this Section shall not be affected in any way by the absence or lapse in any case of covering insurance or by the failure or refusal of any insurance policies affecting the Premises.

(h) If any claim, action or proceeding is made or brought against the City or Parks, pertaining to this Permit,

Permittee at Permittee's sole cost and expense, shall resist or defend such claim, action or proceeding.

(i) The City may arrange for their own defense and the defense of their officials and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may at any time thereafter, tender their further defense to Permittee, without any prejudice to any rights to which they, or any of them, may be entitled to under Section 20(f), including the right to be indemnified and held harmless, as therein provided.

(j) Permittee's duty to defend, indemnify and hold harmless the Indemnitees, as provided in section 20(f), shall not be abrogated, diminished or otherwise affected by Permittee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 19 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this Permit.

(k) The provisions of this Section and all other indemnity provisions of this Permit shall survive the expiration date or sooner termination of this Permit with respect to any liability, suits, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or in connection with any action or failure to take action or any other matter occurring prior to the expiration date of this Permit.

(l) In the event any person or property is injured or damaged due to collapse, breakage, failure, malfunction or misuse of any building(s), structure(s), equipment, apparatus, or materials, of any sort, associated with or used by Permittee or its agents pursuant to the operation of this Permit, regardless of whether such injury or damage occurred on the Premises, Permittee shall indemnify the Indemnitees from any and all claims (even if the claim is without merit), liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of such injury or damage.

21. STORAGE Parks make no representation that there is adequate storage at the Permitted Premises. Permittee at its sole cost and expense shall obtain any off-site storage space required for the operation of this concession. Unless Permittee is specifically authorized in writing to use a Parks building or facility, Permittee shall not store any equipment or supplies on Parks' property. No item, equipment or supplies shall be placed upon any public space, including the ground adjacent to the Premises without Parks' prior written approval.

Permittee shall secure the concession and any other equipment every evening at the close of business and any other time that the concession is closed. Following each day of operation, the Permittee shall remove all personal property and equipment from public view. The Permittee

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shall supply all equipment necessary to operate the concession authorized herein.

22. RESERVED.

23. FIXED EQUIPMENT The Commissioner represents that City has title to all equipment and fixtures located at the Premises. Title to any construction, renovation, or improvements made to the Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option Permittee shall remove such items at its sole cost and expense and restore the Premises to its original condition and to Parks' satisfaction.

24. RECORDS OF SALES Permittee shall maintain records of the following information in a form suitable for audit by Parks or the City Comptroller's Office:

(a) Sales or service activities from this concession recorded separately from any other businesses that may be operated by the Permittee.

(b) Sales information must be posted daily in a formal set of books or records of account.

(c) Cash receipts from the operation under this Permit must be deposited regularly in a separate bank account located in New York City and reconciled with the sales reports.

(d) Related records of the operation authorized hereunder shall be retained for a period of at least ten (10) years from the expiration or sooner termination of this Permit.

(e) Permittee shall pay all taxes applicable to the operation of the concession.

25. INTERNAL CONTROLS Throughout the Term, Permittee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. Permittee must also establish a dedicated bank account for all deposits related to this concession's revenue. All fees, prices and any subsequent increases require Parks' prior written approval. Permittee shall maintain all accounting and internal control-related records for a minimum of ten (10) years from the date of creation of the record.

26. STATEMENT OF GROSS RECEIPTS & INCOME At Parks request, the Permittee shall submit a seasonal statement of gross receipts from all categories of income derived under this Permit and in accordance with the operation plan and hours of operation as set forth in **Exhibit B** attached hereto in a format approved in writing by Parks. In addition, the Permittee shall have available,

for review at Parks' request, monthly statements of gross receipts, as well as a detailed income and expense statement for the past year's operation.

Permittee shall pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state or city taxes, which are paid by the Permittee.

27. AUDIT Permittee shall make available to the office of The Comptroller of the City of New York, or Parks' auditor, on demand, all books, records, documents and correspondence pertaining to this Permit, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York or the Commissioner of Parks.

28. TAXES Permittee is responsible for obeying all relevant laws, rules and regulations and obtaining all necessary permits and licenses. Permittee shall obtain and provide to Parks a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other applicable taxes. If the Premises are in the Borough of Manhattan, south of 96th Street, the Permittee shall pay the New York City Commercial Rent or Occupancy taxes.

29. NOTICE TO CURE Permittee shall comply with all directions and instructions Parks issues to Permittee. Permittee understands that failure to comply with any such directive or with any of the provisions of this Permit within ten (10) days or any shorter period set forth in any directive may result in the suspension and/or termination of this Permit. Parks may impose a Two Hundred and Fifty Dollars (\$250.00) administrative fee for reinstatement of a suspended Permit.

30. SUSPENSION This Permit may be suspended for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice of suspension, Permittee shall not operate. In the event that Permittee's business is disrupted due to construction in the park where the Premises is located, this Permit may be suspended, at Parks' option. If the suspension is related to Parks' construction, Parks in its sole discretion may extend the Term of this Permit by the amount of time Permittee was prevented from operating due to such construction.

31. NO EXCLUSIVE VENDING RIGHTS This Permit does not grant the Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Parks may grant other permits to instructors to provide tennis instruction authorized under the Permit within the same park in which the Premises are located. Permittee acknowledges and understands that Parks does not guarantee that illegal vendors or disabled veteran vendors or persons unauthorized by Parks will not compete with Permittee near the Premises.

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32. OTHER PERMITS A New York City Department of Parks and Recreation Vendor’s license is **NOT** a substitute for a Consumer Affairs or a Department of Health license. For many locations, and for many types of concessions, more than one license or permit may be required. Without **ALL** necessary licenses or permits, Permittee may be fined, Permittee’s items may be confiscated and Permittee may be prevented from operating. Permittee shall check for license/permit requirements with the following appropriate department:

**New York City Department of Consumer Affairs
80 Lafayette Street
New York, NY 10013
(212) 487-4444**

33. SPECIAL EVENTS Permittee shall cooperate with Parks during special events and other unanticipated eventualities. It is expressly understood that this Permit shall in no way limit Parks' right to sponsor or promote Special Events or to enter into agreements with third parties to sponsor or promote such events. Parks reserves the right to delay concession activities, relocate the Permittee from the Premises or suspend operations under the Permit in the event that such Special Event occurs within the Premises. Enforcement of security directives may also restrict vehicular access to the park, roadways and concession site. Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and cleanup of the Premises associated with any such Special Event.

34. PERMIT/SIGNAGE DISPLAY Permittee shall conspicuously display, at all times, rates for tennis instructions, the 311 sign with the Parks’ leaf logo, this Permit, and/or any other permit, license, sticker or identification issued to Permittee by Parks, the City or any other governmental agency. Parks will issue Permittee a new decal at the beginning of each season of the Permit term, provided that Permittee is in compliance with the terms and conditions hereof. Permittee shall be subject to a One Hundred Dollar (\$100) fee to replace lost decals.

35. NO DISCRIMINATION Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, or any other protected class of individuals as defined by City, state or federal laws, rules or regulations. As used herein, the term “employment” shall mean and include, without limitation, the following: recruited, whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, downgraded, transferred, laid off, and terminated. Any violation of this paragraph shall be deemed a material breach of this Permit for which it may be terminated or suspended.

36. INSPECTIONS AND LIQUIDATED DAMAGES

Upon signing the Permit, Permittee agrees that Parks Inspectors and/or Park Enforcement Officers may confiscate any and all material found to be outside of the vending location. If material is stored or displayed outside of the vending location, all expenses associated with enforcement of this requirement will be reimbursed by Permittee to the City. Permittee shall reimburse the City within thirty (30) days of receipt of a written request.

Permittee agrees that any failure to perform requirements to such standard as set forth herein shall result in injuries to the City and its residents, businesses, and institutions, the compensation for which will be difficult to ascertain.

Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, Parks may issue directives regarding deficiencies the Permittee will be obligated to rectify in a timely fashion. Violations of the terms of the Permit Agreement may result in the assessment of liquidated damages, which, if not paid promptly, may be deducted, from the Permittee’s security deposit.

Accordingly Permittee agrees that notwithstanding any other remedy at law to ensure Permittee’s compliance with the provisions of this Permit, the liquidated damages in the amounts set forth herein below are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. If Permittee fails to provide the required cleaning, maintenance, and operational services, Parks shall notify the Permittee in writing, and the Permittee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Permittee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the Permit. Parks may impose a Two Hundred and Fifty Dollar (\$250) administrative fee for reinstatement of a suspended Permit. Liquidated damages may be assessed in accordance with the following schedule:

<u>Provision</u>	<u>Liquidated Damage Per Occurrence</u>
Unauthorized instruction	\$150
Missing or unauthorized price list	\$250
Overcharging	\$350
Expanding	\$350
Blocked exits/Paths/Roadways/ Vehicles on Sidewalks	\$350
Unauthorized Vehicular Activity	\$350

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Improper disposal (Noxious liquids, Debris, etc.)	\$350
Graffiti, dirty Premises	\$350
Unauthorized Advertising	\$350
Roving or instructing at Unauthorized Location	\$250
Improper storage	\$350
Damage to Parks Property (e.g., Trees, Fencing, Hex Pavement)	\$350
Sticker Expired or not displayed	\$250
311 sign not displayed	\$250
Unauthorized tapping into utilities used, operated or owned by the City	\$350

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply with the requirements set forth herein. If Permittee fails to pay liquidated damages to Parks within ten (10) days of receipt of notice, this Permit may be suspended or terminated. In addition, Parks may seize Permittee’s security deposit, described in Section 17 herein, to cover the amounts of any outstanding payments for liquidated damages. If Permittee receives an assessment for one of the above violations, there is a process by which such assessment may be appealed, as described below, if Permittee believes that the assessment has been assessed in error.

Filing an Appeal

- A. If the concessionaire 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 Permittee believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Permittee’s appeal (such as photographs, documents, and witness statements) 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 Permittee’s account.

Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning (“OMP”), whose office is located at The Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of OMP to decide on the merits of these appeals. The decision of the Director of OMP shall

constitute the final decision of NYC Parks & Recreation.

- B. The Director of OMP is authorized to investigate the merits of the appeal, but is not required either to hold a hearing or to speak to Permittee in person.

37. INSPECTIONS AND INVESTIGATIONS

(a) Permittee shall allow the Commissioner, his or her representatives or any other City, State or Federal official having jurisdiction with photo identification to inspect the Premises which Permittee operates at any time.

(b) The parties to this Permit 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.

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

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

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

AGREED TO: _____
Permittee’s Signature

Date

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

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, Permits or licenses that the refusal to testify concerns and that have not been assigned as Permitted under this Permit, 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.

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

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

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

(iii) The nexus of the testimony sought to the subject 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 (e) 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 (d) (i) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

(ii) The “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.

(h) (i) In addition to and notwithstanding any other provision of this Permit the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days’ written notice in the event Permittee 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 Permittee, or affecting the performance of this Permit Agreement.

38. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE This Permit shall be deemed to be a contract (“Contract”) executed in the City of New York, State of New York, regardless of Permittee’s domicile, and shall be governed by and construed in accordance with the laws of the State of New York. Permittee agrees that any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York (“Federal Courts”) or in the courts of the States of New York (“New York State Courts”) located in the City and County of New York. To effect this agreement and intent, Permittee agrees to the following:

(a) If the City initiates any action against the

AGREED TO: _____
Permittee’s Signature

Date

Permittee in Federal Court or in New York State Court, service of process may be made on the Permittee either in person, wherever such Permittee may be found, or by registered mail addressed to the Permittee at its address as set forth in this Permit, or to such other address as the Permittee may provide to the City in writing; and

(b) With respect to any action between the City and the Permittee in New York State Court, the Permittee 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.

(c) With respect to any action between the City and the Permittee in Federal Court located in New York City, the Permittee expressly waives and relinquishes any right it might otherwise have more to transfer the action to a United States Court outside the City of New York.

(d) If the Permittee 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 Permittee 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 Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision of this Section is held unenforceable for any reason, each and every other provision shall nevertheless remain in full force and effect.

Permittee waives trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other in any matter related to this Permit.

39. PROCUREMENT OF AGREEMENT Permittee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Permittee 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. Permittee makes such representations and warranties to induce the City to enter into this Permit and the City relies upon such representations and warranties in the execution hereof.

For a breach of violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and the Permittee shall not make any claim for, or be entitled to recover, any sum or sums due under this Permit. 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 for by law or pursuant to this Permit.

40. CUMULATIVE REMEDIES - NO WAIVER The specific remedies to which the City may resort under the terms of this Permit are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

41. SEVERABILITY; INVALIDITY OF PARTICULAR PROVISIONS If any term or provision of this Permit or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and enforceable to the fullest extent permitted by law.

42. CONFLICT OF INTEREST. Permittee 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. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Permit which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Permit or in the proceeds thereof.

43. JUDICIAL INTERPRETATION. Should any provision of this Permit 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

44. INDEPENDENT STATUS OF PERMITTEE.
(a) Permittee is not an employee of Parks or the City and

AGREED TO: _____
Permittee's Signature

Date

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

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

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

46. PRIOR UNDERSTANDING; NO ORAL MODIFICATION. This Permit states the entire and integrated agreement between the City and Permittee and supersedes all prior negotiations, representations and agreements, whether written or oral. This Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and Permittee.

47. MARKETING AND SPONSORSHIP AGREEMENTS. Permittee must obtain the prior written approval of Parks prior to entering into any

marketing or sponsorship agreement. In the event Permittee breaches this requirement, City shall take any action that the City may deem necessary to protect the City's interest.

48. PAYMENT AND NOTICE. Any Permit fees, charges or sums payable by Permittee to Parks shall be made to the New York City Department of Parks & Recreation, Revenue Division, The Arsenal - Room 407, 830 Fifth Avenue, New York, NY 10065.

Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery, facsimile, or by mailing a copy of such notice by mail addressed to Commissioner of Parks at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and to the attention of Permittee at its address set forth on the Cover Page, or to any other address that Permittee shall have filed with Commissioner.

49. REIMBURSEMENT OF CITY. Permittee shall, within thirty (30) days of receipt of a written request, reimburse City and Parks for all costs incurred by City or Parks in assisting Permittee to comply with this Permit or in rectifying any non-compliance by Permittee with the terms and conditions hereof.

NYC Parks may require that the City own the portion of any name selected by Permittee for use at the Premises that indicates NYC Parks' property or a preexisting facility name or otherwise contains any City IP. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with NYC Parks' property. Permittee may use the name "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" in connection with its operations under this Permit only to identify the location of the Premises, and any other uses of "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" or any other City IP may be only pursuant to a separate written agreement between the City and Permittee.

50. EARNED SAFE AND SICK TIME ACT. Permittee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as set forth in the NYC Earned Safe and Sick Time Act Concession Agreement Rider attached hereto as **Exhibit A.**

AGREED TO: _____
Permittee's Signature

Date

EXHIBIT A**NYC EARNED SAFE and SICK TIME ACT CONCESSION AGREEMENT 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) 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 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.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time

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

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 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.

EXHIBIT B

OPERATING HOURS AND COURT ASSIGNMENT FORM

Tennis Pro Name: _____

Park: _____

Permit #: _____

Hours of Operation:

Monday: _____

Tuesday: _____

Wednesday: _____

Thursday: _____

Friday: _____

Saturday: _____

Sunday: _____

Court Assignment:

What tennis court are you assigned to when you are conducting tennis lessons?

EXHIBIT C:

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.

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 _____

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 7)

RESOLVED, that the Franchise and Concession Review Committee ("FCRC") authorizes the New York City Department of Parks and Recreation "Parks") pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Eric Jordan for the Operation of Tennis Professional Concession at William E. Kelly Memorial Park Brooklyn, NY. The agreement will provide for 5-year term. Compensation to the City will be Annual Fee(s): Season 1: \$5,000.00 Season 2: \$5,500.00 Season 3: \$6,250.00 Season 4: \$6,500.00 Season 5: \$6,750.00.

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____

Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Concession Title Citywide Tennis Professionals Concession ID CWTP-2024 B129-TP

Description For the Operation of Tennis Professional Concessions at Various Locations Citywide Agency New York City Department of Parks and Recreation ("Parks")

Additional information has been attached to this document (please use the "Additional Information Form" available on BuyWise)

Recommended Concessionaire

Name Zurab Tskhakaia Telephone 646-520-5377
 Address 1131 Ave Z, Apt 1A EIN or SSN # 826-46-0668
Brooklyn, NY, 11235 Not-for-Profit Organization Certified M/WBE by SBS

Recommended Concession Agreement Term

Initial Term Notice to Proceed to 11/24/2028 Concession Site(s) Yes No
 Renewal Option(s) _____ to _____ Address Kaiser Park
 _____ to _____ Neptune Ave & 28th Street
 Total Potential Term 5 years Borough Brooklyn Community Board 13
 >20 years – FCRC unanimously approved term on ____/____/____ Block# 6965 Lot# 100

Recommended Annual Revenue

(Check all that apply)
 Annual Fee(s) \$ _____
 Gross Receipts _____ %
 The Greater of Annual Minimum Fee(s) of \$ _____ vs _____ % of Gross Receipts
 Other Additional information

Notice Requirements

Please indicate below how the Notice of Intent to Enter into Negotiations was publicized:

- REQUIRED** At least 5 successive issues of the City Record, from 06/18/24 to 06/25/24 (the last of which was no fewer than 10 days before negotiations were expected to begin)
- REQUIRED** Published on the City's website on 06/18/24 (the same day it was first published in City Record)

Award is a Major Concession

- Yes – Award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:**
 - CPC approved on ____/____/____
 - City Council approved on ____/____/____
 - N/A
- No**

Negotiation Requirements

The due date for proposers to respond to the Notice of Intent to Enter into Negotiations was: 07/22/24 at 5:00 AM PM
2 potential concessionaires responded by that time.

Please select the appropriate option below

- The agency negotiated with all qualified potential questionnaires that had expressed interest,
- OR;
- The agency determined that it was in the best interest of the City to negotiate with fewer potential questionnaires, and the CCPO approved such determination on ____/____/____. Negotiations were conducted with _____ potential concessionaires

Please describe the negotiation process conducted, including any Best and Final Offers ("BAFOs") requested:

Parks had video conference calls with proposers, offers and proposals were received, and proposals were reviewed.

- The agency certifies that the concession manager has maintained a written record of the conduct of negotiations and the basis for every determination to continue/suspend negotiations with each potential concessionaire

Rule 1-14: Negotiated Concession

Concession Agreement Recommendation For Award Memorandum Cover Sheet

Public Hearing Requirements

(Only applicable for significant concessions)

[IF REQUIRED] a public hearing was conducted on: ____/____/____

Subject concession is a (check one): **Citywide** or **NOT Citywide** concession and Agency hereby certifies that a notice summarizing the terms and conditions of the proposed concession, and the time, date and location of the public hearing was published once in the City Record and given to all affected CB-BP and the Committee Members on ____/____/____ (not less than 15 days prior to the hearing date). In addition, if you have posted this notice publicly elsewhere, please describe below:

Subject concession is non-significant. No public hearing is required

FCRC Approval

FCRC approved this concession agreement on 11 / 13 / 24 (date of the FCRC public meeting)

Votes in favor: _____ Votes against: _____

OR

The concession was not subject to approval of the FCRC because it has a term of less than 30 days and is not subject to renewal

Law Department approved concession agreement on: ____/____/____

Authorized Signatures

Agency Staff

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

Signature _____

Name _____

Title _____ Date _____

Certificate of Procedural Requisites

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

Signature _____ Date _____

City Chief Procurement Officer

ADDITIONAL INFORMATION

For Agency Use With Concession Forms

Citywide Tennis Professionals

CWTP-2024 B129-TP

Concession Title _____ **Concession ID** _____

Description For the Operation of Tennis Professional Concessions at Various Locations Citywide **Agency** New York City Department of Parks and Recreation ("Parks")

Season 1 (2024): \$500.00
Season 2 (2025): \$1,000.00
Season 3 (2026): \$1,500.00
Season 4 (2027): \$1,700.00
Season 5 (2028): \$2,000.00

APPROVAL AS TO FORM OF A PERMIT BY STANDARD TYPE OF CLASS

AGENCY: DEPARTMENT OF PARKS AND RECREATION

PERMIT: TEMPLATE VENDOR PERMIT FOR THE OPERATION OF TENNIS
PROFESSIONAL CONCESSIONS AT VARIOUS LOCATIONS CITYWIDE

SOLICITATION: CWTP-2024

I hereby approve as to form and certify as to legal authority the annexed “Tennis Professional Concession” vendor permits by standard type of class. This approval is valid for a period of one (1) year from the date hereof and for a maximum of thirty (30) permits. The above approval is made on the express understanding that the substantive language of the subject permits will not be altered or changed in any way without prior submission to the Office of the Corporation Counsel for approval, provided, however, that blank spaces in the permits requiring names, dates, locations, dollar amounts, or other similar details may be completed.

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY

Isabel Galis-Menendez

ACTING CORPORATION COUNSEL YHW

DATE: 8/27/2024

LM # 2024-062529



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

PERMIT

<u>PERMITTEE NAME & ADDRESS</u> ZURAB TSKHAKAIA 1131 AVE Z, APT1A BROOKLYN, NY, 11235		<u>TELEPHONE</u> 646-520-5377	<u>MOBILE</u> 646-520-5377
		<u>FAX</u>	<u>CONTACT</u> ZURAB TSKHAKAIA
<u>DESCRIPTION OF CONCESSION/ EVENT</u> This tennis professional is authorized to use one (1) tennis court for the purpose of teaching tennis at the Premises defined below during the times that the court is open for use. The court shall be available to the public when lessons are not scheduled. Additional services may not be offered without NYC Department of Parks & Recreation’s written permission.			
<u>PARK/ LOCATION IN PARK (“PREMISES”)</u> Kaiser Park Neptune Ave and 28th Street		<u>BOROUGH:</u> Brooklyn	
		<u>PERMIT NO.:</u> B129-TP	
<u>EFFECTIVE DATE:</u> Notice to Proceed		<u>EXPIRATION DATE:</u> November 19, 2028	
<u>FEE AND PAYMENT TERMS</u> Season 1: \$500.00 Season 2: \$1,000.00 Season 3: \$1,500.00 Season 4: \$1,700.00 Season 5: \$2,000.00			
<u>INSURANCE REQUIREMENTS</u> See Section 19 of the attached General Provisions.		<u>BROKER</u>	
<u>SECURITY DEPOSIT:</u> \$2,000.00		<u>JC NUMBER & DATE RECEIVED</u>	
<u>OTHER TERMS & CONDITIONS:</u> Please see the attached general provisions, which are incorporated herein, before signing. Also, please note that a payment schedule and approved price list will be sent to the Permittee upon Notice to Proceed.			
TERMS ACCEPTED BY _____ (Sign & Print)		TITLE _____	
ISSUED BY _____ (Sign & Print)		DATE _____	

1. DEFINITIONS This document shall be referred to as "Permit". The named person to whom this Permit is issued and who signs this Permit to operate this tennis concession shall be referred to in this document as "Permittee" or "Concessionaire". The City of New York shall be referred to as "City" and the New York City Department of Parks & Recreation shall be referred to as "Parks". "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or her designee. "Comptroller" shall mean the Comptroller of the City of New York. The area to which Permittee is assigned under this Permit shall be referred to as the "Premises" or "Tennis Courts". The Premises is more fully described in the cover sheet hereinafter referred to as the "Cover Page", attached hereto and made a part hereof. The period between the Commencement Date and the Expiration Date set forth on the Cover Page shall be referred to as the "Term."

2. TRANSFERS This Permit is issued solely to the Permittee on the basis of statements Permittee submitted in its Bid or Proposal. Permittee shall not sell, transfer, assign or sublicense this Permit or allow anyone else or any other entity to operate the concession under this Permit without Parks' written consent.

3. IDENTIFICATION AND ADDRESS Permittee shall provide proof of its identification and address by submitting acceptable documentation such as a government issued photo ID, current utility bills, bank statements or rental/lease agreements, or a certificate of incorporation to Parks. Documents listing a post office box or commercial receiving agency as the mailing address shall not meet the requirements of this section 3. . Permittee shall notify Parks immediately of any change in either Permittee's address or phone number as set forth on the Cover Page.

4. ASSUMPTION OF RISK In accepting this Permit, Permittee assumes all the risks involved in operating this concession as described on the Cover Page. Permittee represents that Permittee has inspected the Premises and found it suitable for Permittee's purpose and in operating condition. Subject to Parks' prior written approval, Permittee shall perform any improvements and repairs deemed necessary by Permittee, at Permittee's sole cost and expense. Permittee shall maintain or cause to be maintained total security within the Premises and shall cooperate with Parks to ensure security of surrounding parkland. Permittee shall provide adequate security at all times for Permittee's equipment, products and personnel.

5. SCOPE OF PERMIT Parks authorizes Permittee to operate this concession granted under this Permit in accordance with the terms and conditions set forth herein and with the description of the concession set forth on the Cover Page. Permittee shall provide only tennis instruction as approved by Parks. The sale of food, tennis wear, equipment or supplies is strictly prohibited.

Parks will designate only one court at each site for teaching use. This court must be available to the public when no lessons are scheduled. Any request for a change in court designation is subject to Parks' prior written approval. Parks reserves the right to restrict the number of hours used for teaching.

Permittee expressly understands that no land, building, space, equipment, property or other proprietary right or interest is leased or otherwise conveyed by this Permit. Permittee acknowledges that it will be using the Premises based solely on its own investigation, that the City has not made any representations, warranties or statements concerning the fitness thereof, and that Permittee accepts it for its use in its present condition "as is."

6. PRICE LISTS All items and prices are subject to Parks' prior written approval. Permittee shall conspicuously display a price list identical to the one that Parks has reviewed and approved in writing and charge no more for the services Permittee sells than the posted, approved amounts. Permittee shall not add items of service to Permittee's approved list of fees without Parks' prior written permission.

Parks has set the following maximum rates, which will be effective at the start of the 2024 season. Parks reserves the right to regulate the maximum rates for tennis instruction. Any increases in the rates shall require Parks' prior written approval.

Category	Professional	Head Professional
Half Hour	\$40.00	\$45.00
Full Hour	\$65.00	\$70.00
Full Hour Group Lessons for Two	\$40.00 per person	\$45.00 per person
Full Hour Group Lessons for Three or More	\$32.00 per person	\$38.00 per person

7. OPERATIONS

(a) Permittee shall operate a high-quality tennis instruction concession for the use and enjoyment of the public and in such manner as the Commissioner of Parks (the Commissioner) shall prescribe and in accordance with the operation plan, and hours of operation as set forth in **Exhibit B** attached hereto and made a part of this Permit. Changes in the hours of operation and tennis instruction fees are subject to Parks' prior written approval. The Commissioner retains the right, throughout the Term of this Permit, to approve or disapprove any and all rates, fees and prices to be charged by Permittee for any services provided pursuant to the operation of this Permit.

AGREED TO: _____
 Permittee's Signature

 Date

(b) Permittee, at its sole cost and expense, shall obtain and maintain all necessary approvals, licenses and permits that are required to operate this concession in accordance with all City, state, and federal laws.

(c) Permittee shall provide and conspicuously post an appointment sign-up sheet in a location approved by Parks, which must be made available for Parks' inspection.

(d) Permittee shall carry a photo identification card at all times during the operation of this Permit.

(e) Subject to Parks' prior written approval, Permittee may erect, at its sole cost and expense, a net to divide the assigned teaching court from other courts available to the public to prevent balls from the teaching court to interfere with play on adjacent courts. Permittee will be required to remove the netting at the end of each season.

(f) Subject to Parks' prior written approval, Permittee may use, at its sole cost and expense, no more than one (1) low-noise motor tennis ball machine to conduct tennis lessons at the Permitted Premises.

(g) To ensure Parks' satisfaction with Permittee's compliance as required herein, Permittee shall provide Parks with full and free access to the Permitted Premises.

(h) Permittee may at its option, during the tennis season volunteer time to provide free clinical instruction in Parks' Youth tennis program.

(i) Permittee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of Parks. The display or placement of tobacco electronic cigarette, and/or non-tobacco smoking product advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks. Advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Permittee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Permittee will be prohibited from placing advertisements on the exterior of its concession area. Any prohibited material displayed or placed shall be immediately removed by the Permittee upon notice from Parks at Permittee's sole cost and expense.

8. EXPANDING INSTRUCTION SPACE Permittee is authorized to have only the equipment approved by Parks and incidental to the operation of the Permit. Permittee shall not keep additional racks, stands, carts or displays adjacent to the Premises.

This Permit does not grant Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Moreover, Parks may grant other permits to other instructors to provide the same or similar tennis instruction within the same park in which the Premises are located.

Permittee shall maintain close liaison with Parks' Enforcement Patrol ("PEP"), NYPD, and other police officials, and shall reasonably cooperate with all efforts to remove illegal vendors from the Permitted Premises and adjacent areas.

9. FREE ACCESS Permittee shall not block any sidewalk, pathway, park entrance or other pedestrian walkway with Permittee's equipment or supplies. Permittee shall place Permittee's equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times. Permittee shall cooperate with Parks during special events and other unanticipated eventualities.

10. TERMINATION Parks may terminate this Permit at any time if Permittee does not comply with the terms of this Permit or for any reason. Permittee will be given a written termination notice should the City and/or Parks desire to terminate the Permit, such termination to be immediately effective upon the mailing, delivery by hand or facsimile thereof. Permittee expressly waives any and all claims against the City and Parks for losses and or damages Permittee may suffer in the event of termination.

11. TERMINATION AND REMOVAL Upon the expiration, or sooner termination of this Permit, Permittee shall immediately cease all operations under this Permit and shall vacate the Premises without any further notice by Parks and without resort to any judicial determination regarding termination of this Permit. Parks reserves the right to take immediate possession of the Premises.

Permittee shall, on or before the expiration or termination date, remove all Permittee's personal property from the Premises. Any personal property remaining on the Premises after the expiration, or sooner termination, of this Permit, shall be deemed abandoned by Permittee. Permittee shall remain liable to Parks for any damages, including lost revenue to Parks and the cost of removal or disposal of personal property left at the Premises by Parks should Permittee fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date. Permittee shall, on or prior to the expiration or sooner termination of this Permit, return to Parks any Permit stickers issued to Permittee by Parks.

AGREED TO: _____
Permittee's Signature

Date

12. **TREES** Permittee is prohibited from cutting down, pruning or removing any trees on the Premises. Any attachments to trees, including but not limited to lights, are not permitted.

13. **EQUIPMENT** Permittee shall maintain the Premises and equipment incidental to the operation of the concession, in clean, good operating condition.

14. **DISABLED ACCESS** The Permittee shall comply with all City, State and Federal laws relating to access for persons with disabilities. The Permittee shall comply with all New York City, state and federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Permittee is encouraged to meet and exceed the minimum accessibility requirements whenever possible.

15. **NO TOBACCO/ALCOHOL** The selling and/or advertisement of cigarettes, cigars, electronic cigarettes, any other tobacco products, non-tobacco smoking products, or alcohol is strictly prohibited. In addition, smoking anywhere on the Premises is strictly prohibited except in parking lots or on sidewalks along the park perimeter. It is the Permittee's responsibility to adhere to and enforce the prohibitions of this Section 15.

16. **PARKS RULES & REGULATIONS** Permittee shall comply with Parks' rules and regulations governing use of the Tennis Courts. Permittee shall be exempt from the current rule that only six (6) balls may be used on a tennis court.

This Permit is issued to Permittee for the sole purpose of conducting tennis instructions at the Premises. Tennis pupils are not required to obtain a Parks' tennis Permit for tennis instruction.

Permittee shall not use this Permit for personal tennis play at the Premises or at any other municipal tennis courts. Permittee shall obtain a tennis play permit for personal tennis play at the Premises and all other municipal tennis courts.

Information regarding Parks tennis Permits may be found at: <http://www.nycgovparks.org/permits/tennis-permits>

All tennis instructors or professionals are required to have a current teaching certification from either the United States Professional Tennis Association (USPTA), United States Tennis Association (USTA) the Professional Tennis Registry (PTR), or equivalent accreditation as determined by Parks. All tennis instructors or professionals, including independent contractors and sublicensees, must have training and experience in tennis instruction meeting standards that are satisfactory to Parks. This must include, but is not limited to, a tennis teaching certification as required above.

17. **SECURITY DEPOSIT** Permittee's security

deposit, the dollar amount as set forth on the Cover Page of this Permit, will be held, without liability for the City to pay interest thereon, to ensure that Permittee fulfills all the terms and conditions of this Permit. The Security Deposit shall consist of cash, a certified check payable to the City of New York, or an irrevocable letter of credit naming the City of New York as beneficiary or other negotiable instrument payable to the City of New York, which the Comptroller shall approve, as being of equal market value with the sum so required. Permittee may collect or receive annually any interest or income earned on such negotiable instrument less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing accounts. If Permittee fails to perform any of the terms and conditions of this Permit, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, appropriate and apply the security deposit or as much as is required to compensate the City toward (a) the payment of sums due from the Permittee or (b) towards any loss, damage or expense sustained by the City resulting from such default on the part of Permittee. If Permittee fails to make timely fee payments, Permittee's security deposit may be seized. If Permittee operates without insurance or in a location in the Park other than the Premises or at times not authorized by this Permit, Parks may also seize Permittee's security deposit. If Permittee causes any damage to Parks property, the security deposit may also be used to pay for the repairs. If part of Permittee's security deposit is used for any purpose, Permittee shall replace that sum within thirty (30) days of Parks' appropriation of such sum. Failure to replace such sum as required herein may result in the termination of this Permit. Permittee is responsible for any costs beyond those covered by the security deposit. If Permittee ceases Permittee's operations at the Premises prior to the termination of this Permit, Parks may seize Permittee's security deposit.

18. **LATE PAYMENTS** A late charge may be assessed for any fee payment not received by Parks on or prior to the payment dates specified in this Permit. A late charge of two percent (2%) per month may be applied to any unpaid balance that is overdue for ten (10) days following the date for which such fees are due. For example, a monthly payment, in the amount of \$1,000.00, due on the 1st day of the month must be received no later than the 10th day of the month. If no payment is received, a 2% late charge in the amount of \$20.00 will be assessed on the 11th day of the month.

19. **INSURANCE** Insurance must be in place throughout the entire of the Permit.

(a) Permittee shall maintain Commercial General Liability ("CGL") insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily

AGREED TO: _____
Permittee's Signature

Date

injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury, and **if the policy contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to each permit location and the per-location aggregate shall be at least Two Million Dollars (\$2,000,000).** If Permittee intends to use any independent contractors to teach on its court, Permittee’s CGL policy must cover the independent contractor’s activity. This insurance shall protect the insureds from claims that may arise from any of the operations under this Permit. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner of Parks and shall be “occurrence based” rather than “claims-made”. **Such CGL insurance shall name the City, together with its officials and employees and any entity as required by the Park location indicated on the Permit Cover; Section D(4) of the RFB solicitation # CWTP-2024, or otherwise required by Parks, including that entity’s volunteers, officials and employees (collectively, the “Indemnitees”, each, an “Indemnitee”) as an Additional Insured** with coverage at least as broad as the most recent edition of ISO Form CG 20 26, and the additional insureds’ limits will be no lower than Permittee’s. Such CGL insurance shall be primary and non-contributing to any insurance or self-insurance maintained by any Indemnitee. A certified copy of this CGL policy or a Certificate of Insurance (evidencing the CGL insurance and the Indemnitees’ status as additional insured) must be submitted to and accepted by the Commissioner prior to or upon execution of this Permit.

(b) During the term of the Permit, Permittee shall also carry statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. Permittee must submit proof of valid Workers’ Compensation Insurance, Employer’s Liability, and Disability Benefits Insurance in the following acceptable forms: (1) C-105.2; (2) State Insurance Fund Form No. U-26.3; (3) New York State Workers’ Compensation Board Form No. DB-120.1; (4) equivalent or successor forms used by the New York State Workers’ Compensation Board; (5) or other proof of insurance in a form acceptable to the Commissioner of Parks. If Permittee is or intends to be exempt from the requirements of the New York State Worker’s Compensation Law, Permittee must submit Certificate of Exemption Form No. CE-200.

(c) If vehicles are to be used in connection with Permittee’s operations, Permittee shall carry Commercial Automobile Liability insurance in the amount of One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If Permittee does not provide proof of compliance with this requirement, no vehicular use will be permitted within Parks boundaries.

(d) The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed program warrants it.

(e) All Insurance Certificates shall be accompanied by either a duly executed “Certification by Broker” satisfactory to the Commissioner in form and substance or completed copies of all policies referenced in the Insurance Certificate. Upon Parks and/or the New York City Law Department’s request at any time during the Term of this Permit, Permittee shall provide Parks with a copy of the insurance policy and proof of its insurance coverage.

(f) For each policy required under this Permit, except for Workers’ Compensation Insurance, Disability Benefits Insurance, and Employer’s Liability Insurance, Permittee shall file a Certificate of Insurance with Parks upon signing this Permit and as a condition of issuance of this Permit. All Certificates of Insurance shall be (i) in a form acceptable to the City and certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) accompanied by the endorsement in Permittee’s general liability policy by which the City has been made an additional insured pursuant to Section 19(a). All Certificate(s) of Insurance shall be accompanied by either a duly executed “Certification by Insurance Agent or Broker” in the form attached as **Exhibit C** or copies of all policies referenced in the Certificate of Insurance. If complete policies have not yet been issued, binders are acceptable until such time as the complete policies have been issued, at which time such policies shall be submitted.

(f) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of policies required under this Section. Such Certificates of Insurance shall comply with the requirements of this Section, as applicable.

(g) Permittee shall provide the City with a copy of any policy required under this Section upon the demand for such policy by the Commissioner or the New York City Law Department.

(h) Acceptance by the Commissioner of a certificate or a policy does not excuse the Permittee from maintaining policies consistent with all provisions of this Section (and ensuring that subcontractors maintain such policies) or from any liability arising from its failure to do so.

20. INDEMNIFICATION AND HOLD HARMLESS

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

(b) Permittee shall be solely responsible for taking all

AGREED TO: _____
Permittee’s Signature

Date

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 Permit.

(c) Permittee 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 Permit, whether or not due to the negligence of Permittee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors or any other person.

(d) Permittee shall use the premises in compliance with, and shall not cause or permit the premises to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the Courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Permittee or the premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this Permit, Permittee shall not cause or permit, or allow any of Permittee'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.

(e) Permittee is personally responsible for any claims made by either any employee or member of the public against Permittee or the City (including its officials and employees) arising from the operation of this Permit.

(f) Permittee assumes all risks in Permittee's operation under this Permit. To the fullest extent permitted by law, Permittee shall indemnify, defend and hold the Indemnitees harmless against any and all claims (even if the claims are without merit), 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 Permit and/or Permittee's failure to comply with the law or any of the requirements of this Permit. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Permittee, the City and its officials and employees shall be partially indemnified by Permittee to the fullest extent permitted by law.

(g) Permittee's obligation under this Section shall not be affected in any way by the absence or lapse in any case of covering insurance or by the failure or refusal of any insurance policies affecting the Premises.

(h) If any claim, action or proceeding is made or brought against the City or Parks, pertaining to this Permit,

Permittee at Permittee's sole cost and expense, shall resist or defend such claim, action or proceeding.

(i) The City may arrange for their own defense and the defense of their officials and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may at any time thereafter, tender their further defense to Permittee, without any prejudice to any rights to which they, or any of them, may be entitled to under Section 20(f), including the right to be indemnified and held harmless, as therein provided.

(j) Permittee's duty to defend, indemnify and hold harmless the Indemnitees, as provided in section 20(f), shall not be abrogated, diminished or otherwise affected by Permittee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 19 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this Permit.

(k) The provisions of this Section and all other indemnity provisions of this Permit shall survive the expiration date or sooner termination of this Permit with respect to any liability, suits, obligation, fine, damage, penalty, claim, cost, charge or expense arising out of or in connection with any action or failure to take action or any other matter occurring prior to the expiration date of this Permit.

(l) In the event any person or property is injured or damaged due to collapse, breakage, failure, malfunction or misuse of any building(s), structure(s), equipment, apparatus, or materials, of any sort, associated with or used by Permittee or its agents pursuant to the operation of this Permit, regardless of whether such injury or damage occurred on the Premises, Permittee shall indemnify the Indemnitees from any and all claims (even if the claim is without merit), liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of such injury or damage.

21. STORAGE Parks make no representation that there is adequate storage at the Permitted Premises. Permittee at its sole cost and expense shall obtain any off-site storage space required for the operation of this concession. Unless Permittee is specifically authorized in writing to use a Parks building or facility, Permittee shall not store any equipment or supplies on Parks' property. No item, equipment or supplies shall be placed upon any public space, including the ground adjacent to the Premises without Parks' prior written approval.

Permittee shall secure the concession and any other equipment every evening at the close of business and any other time that the concession is closed. Following each day of operation, the Permittee shall remove all personal property and equipment from public view. The Permittee

AGREED TO: _____
Permittee's Signature

Date

shall supply all equipment necessary to operate the concession authorized herein.

22. RESERVED.

23. FIXED EQUIPMENT The Commissioner represents that City has title to all equipment and fixtures located at the Premises. Title to any construction, renovation, or improvements made to the Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option Permittee shall remove such items at its sole cost and expense and restore the Premises to its original condition and to Parks' satisfaction.

24. RECORDS OF SALES Permittee shall maintain records of the following information in a form suitable for audit by Parks or the City Comptroller's Office:

(a) Sales or service activities from this concession recorded separately from any other businesses that may be operated by the Permittee.

(b) Sales information must be posted daily in a formal set of books or records of account.

(c) Cash receipts from the operation under this Permit must be deposited regularly in a separate bank account located in New York City and reconciled with the sales reports.

(d) Related records of the operation authorized hereunder shall be retained for a period of at least ten (10) years from the expiration or sooner termination of this Permit.

(e) Permittee shall pay all taxes applicable to the operation of the concession.

25. INTERNAL CONTROLS Throughout the Term, Permittee shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. Permittee must also establish a dedicated bank account for all deposits related to this concession's revenue. All fees, prices and any subsequent increases require Parks' prior written approval. Permittee shall maintain all accounting and internal control-related records for a minimum of ten (10) years from the date of creation of the record.

26. STATEMENT OF GROSS RECEIPTS & INCOME At Parks request, the Permittee shall submit a seasonal statement of gross receipts from all categories of income derived under this Permit and in accordance with the operation plan and hours of operation as set forth in **Exhibit B** attached hereto in a format approved in writing by Parks. In addition, the Permittee shall have available,

for review at Parks' request, monthly statements of gross receipts, as well as a detailed income and expense statement for the past year's operation.

Permittee shall pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state or city taxes, which are paid by the Permittee.

27. AUDIT Permittee shall make available to the office of The Comptroller of the City of New York, or Parks' auditor, on demand, all books, records, documents and correspondence pertaining to this Permit, for the purpose of examination, audit, review or any purpose deemed necessary by the office of The Comptroller of the City of New York or the Commissioner of Parks.

28. TAXES Permittee is responsible for obeying all relevant laws, rules and regulations and obtaining all necessary permits and licenses. Permittee shall obtain and provide to Parks a New York State Sales Tax Number from the New York City Department of Finance. Permittee shall collect and pay New York State and City Sales Tax as well as all other applicable taxes. If the Premises are in the Borough of Manhattan, south of 96th Street, the Permittee shall pay the New York City Commercial Rent or Occupancy taxes.

29. NOTICE TO CURE Permittee shall comply with all directions and instructions Parks issues to Permittee. Permittee understands that failure to comply with any such directive or with any of the provisions of this Permit within ten (10) days or any shorter period set forth in any directive may result in the suspension and/or termination of this Permit. Parks may impose a Two Hundred and Fifty Dollars (\$250.00) administrative fee for reinstatement of a suspended Permit.

30. SUSPENSION This Permit may be suspended for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice of suspension, Permittee shall not operate. In the event that Permittee's business is disrupted due to construction in the park where the Premises is located, this Permit may be suspended, at Parks' option. If the suspension is related to Parks' construction, Parks in its sole discretion may extend the Term of this Permit by the amount of time Permittee was prevented from operating due to such construction.

31. NO EXCLUSIVE VENDING RIGHTS This Permit does not grant the Permittee exclusive rights to provide tennis instruction in the park in which the Premises are located. Parks may grant other permits to instructors to provide tennis instruction authorized under the Permit within the same park in which the Premises are located. Permittee acknowledges and understands that Parks does not guarantee that illegal vendors or disabled veteran vendors or persons unauthorized by Parks will not compete with Permittee near the Premises.

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32. OTHER PERMITS A New York City Department of Parks and Recreation Vendor’s license is **NOT** a substitute for a Consumer Affairs or a Department of Health license. For many locations, and for many types of concessions, more than one license or permit may be required. Without **ALL** necessary licenses or permits, Permittee may be fined, Permittee’s items may be confiscated and Permittee may be prevented from operating. Permittee shall check for license/permit requirements with the following appropriate department:

**New York City Department of Consumer Affairs
80 Lafayette Street
New York, NY 10013
(212) 487-4444**

33. SPECIAL EVENTS Permittee shall cooperate with Parks during special events and other unanticipated eventualities. It is expressly understood that this Permit shall in no way limit Parks' right to sponsor or promote Special Events or to enter into agreements with third parties to sponsor or promote such events. Parks reserves the right to delay concession activities, relocate the Permittee from the Premises or suspend operations under the Permit in the event that such Special Event occurs within the Premises. Enforcement of security directives may also restrict vehicular access to the park, roadways and concession site. Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and cleanup of the Premises associated with any such Special Event.

34. PERMIT/SIGNAGE DISPLAY Permittee shall conspicuously display, at all times, rates for tennis instructions, the 311 sign with the Parks’ leaf logo, this Permit, and/or any other permit, license, sticker or identification issued to Permittee by Parks, the City or any other governmental agency. Parks will issue Permittee a new decal at the beginning of each season of the Permit term, provided that Permittee is in compliance with the terms and conditions hereof. Permittee shall be subject to a One Hundred Dollar (\$100) fee to replace lost decals.

35. NO DISCRIMINATION Permittee shall not unlawfully discriminate against any customer, employee or applicant for employment because of race, creed, sex, color, sexual preference or orientation, national origin, or any other protected class of individuals as defined by City, state or federal laws, rules or regulations. As used herein, the term “employment” shall mean and include, without limitation, the following: recruited, whether by advertising or other means, compensation, selected for training, including apprenticeship, promoted, upgraded, downgraded, transferred, laid off, and terminated. Any violation of this paragraph shall be deemed a material breach of this Permit for which it may be terminated or suspended.

36. INSPECTIONS AND LIQUIDATED DAMAGES

Upon signing the Permit, Permittee agrees that Parks Inspectors and/or Park Enforcement Officers may confiscate any and all material found to be outside of the vending location. If material is stored or displayed outside of the vending location, all expenses associated with enforcement of this requirement will be reimbursed by Permittee to the City. Permittee shall reimburse the City within thirty (30) days of receipt of a written request.

Permittee agrees that any failure to perform requirements to such standard as set forth herein shall result in injuries to the City and its residents, businesses, and institutions, the compensation for which will be difficult to ascertain.

Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, Parks may issue directives regarding deficiencies the Permittee will be obligated to rectify in a timely fashion. Violations of the terms of the Permit Agreement may result in the assessment of liquidated damages, which, if not paid promptly, may be deducted, from the Permittee’s security deposit.

Accordingly Permittee agrees that notwithstanding any other remedy at law to ensure Permittee’s compliance with the provisions of this Permit, the liquidated damages in the amounts set forth herein below are fair and reasonable compensation for such injuries and do not constitute a penalty or forfeiture. If Permittee fails to provide the required cleaning, maintenance, and operational services, Parks shall notify the Permittee in writing, and the Permittee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Permittee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the Permit. Parks may impose a Two Hundred and Fifty Dollar (\$250) administrative fee for reinstatement of a suspended Permit. Liquidated damages may be assessed in accordance with the following schedule:

<u>Provision</u>	<u>Liquidated Damage Per Occurrence</u>
Unauthorized instruction	\$150
Missing or unauthorized price list	\$250
Overcharging	\$350
Expanding	\$350
Blocked exits/Paths/Roadways/ Vehicles on Sidewalks	\$350
Unauthorized Vehicular Activity	\$350

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Improper disposal (Noxious liquids, Debris, etc.)	\$350
Graffiti, dirty Premises	\$350
Unauthorized Advertising	\$350
Roving or instructing at Unauthorized Location	\$250
Improper storage	\$350
Damage to Parks Property (e.g., Trees, Fencing, Hex Pavement)	\$350
Sticker Expired or not displayed	\$250
311 sign not displayed	\$250
Unauthorized tapping into utilities used, operated or owned by the City	\$350

Permittee will receive written notice each time that Parks determines Permittee has violated or failed to comply with the requirements set forth herein. If Permittee fails to pay liquidated damages to Parks within ten (10) days of receipt of notice, this Permit may be suspended or terminated. In addition, Parks may seize Permittee’s security deposit, described in Section 17 herein, to cover the amounts of any outstanding payments for liquidated damages. If Permittee receives an assessment for one of the above violations, there is a process by which such assessment may be appealed, as described below, if Permittee believes that the assessment has been assessed in error.

Filing an Appeal

- A. If the concessionaire 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 Permittee believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Permittee’s appeal (such as photographs, documents, and witness statements) 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 Permittee’s account.

Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning (“OMP”), whose office is located at The Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of OMP to decide on the merits of these appeals. The decision of the Director of OMP shall

constitute the final decision of NYC Parks & Recreation.

- B. The Director of OMP is authorized to investigate the merits of the appeal, but is not required either to hold a hearing or to speak to Permittee in person.

37. INSPECTIONS AND INVESTIGATIONS

(a) Permittee shall allow the Commissioner, his or her representatives or any other City, State or Federal official having jurisdiction with photo identification to inspect the Premises which Permittee operates at any time.

(b) The parties to this Permit 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.

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

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

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

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

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, Permits or licenses that the refusal to testify concerns and that have not been assigned as Permitted under this Permit, 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.

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

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

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

(iii) The nexus of the testimony sought to the subject 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 (e) 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 (d) (i) above gives notice and proves that such interest was previously acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

(ii) The “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.

(h) (i) In addition to and notwithstanding any other provision of this Permit the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days’ written notice in the event Permittee 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 Permittee, or affecting the performance of this Permit Agreement.

38. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE This Permit shall be deemed to be a contract (“Contract”) executed in the City of New York, State of New York, regardless of Permittee’s domicile, and shall be governed by and construed in accordance with the laws of the State of New York. Permittee agrees that any and all claims asserted by or against the City arising under this Permit or related thereto shall be heard and determined either in the courts of the United States located in New York (“Federal Courts”) or in the courts of the States of New York (“New York State Courts”) located in the City and County of New York. To effect this agreement and intent, Permittee agrees to the following:

(a) If the City initiates any action against the

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Permittee in Federal Court or in New York State Court, service of process may be made on the Permittee either in person, wherever such Permittee may be found, or by registered mail addressed to the Permittee at its address as set forth in this Permit, or to such other address as the Permittee may provide to the City in writing; and

(b) With respect to any action between the City and the Permittee in New York State Court, the Permittee 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.

(c) With respect to any action between the City and the Permittee in Federal Court located in New York City, the Permittee expressly waives and relinquishes any right it might otherwise have more to transfer the action to a United States Court outside the City of New York.

(d) If the Permittee 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 Permittee 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 Permittee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

If any provision of this Section is held unenforceable for any reason, each and every other provision shall nevertheless remain in full force and effect.

Permittee waives trial by jury in any action, proceeding, or counterclaim brought by either of the parties against the other in any matter related to this Permit.

39. PROCUREMENT OF AGREEMENT Permittee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Permit upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Permittee 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. Permittee makes such representations and warranties to induce the City to enter into this Permit and the City relies upon such representations and warranties in the execution hereof.

For a breach of violation of such representations or warranties, the Commissioner shall have the right to annul this Permit without liability, and the Permittee shall not make any claim for, or be entitled to recover, any sum or sums due under this Permit. 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 for by law or pursuant to this Permit.

40. CUMULATIVE REMEDIES - NO WAIVER The specific remedies to which the City may resort under the terms of this Permit are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this Permit, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

41. SEVERABILITY; INVALIDITY OF PARTICULAR PROVISIONS If any term or provision of this Permit or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Permit, 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 Permit shall be valid and enforceable to the fullest extent permitted by law.

42. CONFLICT OF INTEREST. Permittee 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. Permittee further represents and warrants that in the performance of this Permit no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this Permit which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Permit or in the proceeds thereof.

43. JUDICIAL INTERPRETATION. Should any provision of this Permit 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 Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

44. INDEPENDENT STATUS OF PERMITTEE.
(a) Permittee is not an employee of Parks or the City and

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

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

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

46. PRIOR UNDERSTANDING; NO ORAL MODIFICATION. This Permit states the entire and integrated agreement between the City and Permittee and supersedes all prior negotiations, representations and agreements, whether written or oral. This Permit may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the City and Permittee.

47. MARKETING AND SPONSORSHIP AGREEMENTS. Permittee must obtain the prior written approval of Parks prior to entering into any

marketing or sponsorship agreement. In the event Permittee breaches this requirement, City shall take any action that the City may deem necessary to protect the City's interest.

48. PAYMENT AND NOTICE. Any Permit fees, charges or sums payable by Permittee to Parks shall be made to the New York City Department of Parks & Recreation, Revenue Division, The Arsenal - Room 407, 830 Fifth Avenue, New York, NY 10065.

Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery, facsimile, or by mailing a copy of such notice by mail addressed to Commissioner of Parks at New York City Department of Parks & Recreation, The Arsenal, 830 Fifth Avenue, New York, NY 10065 and to the attention of Permittee at its address set forth on the Cover Page, or to any other address that Permittee shall have filed with Commissioner.

49. REIMBURSEMENT OF CITY. Permittee shall, within thirty (30) days of receipt of a written request, reimburse City and Parks for all costs incurred by City or Parks in assisting Permittee to comply with this Permit or in rectifying any non-compliance by Permittee with the terms and conditions hereof.

NYC Parks may require that the City own the portion of any name selected by Permittee for use at the Premises that indicates NYC Parks' property or a preexisting facility name or otherwise contains any City IP. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with NYC Parks' property. Permittee may use the name "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" in connection with its operations under this Permit only to identify the location of the Premises, and any other uses of "[FOR NAME(S) OF PARK(S), SEE COVER PAGE]" or any other City IP may be only pursuant to a separate written agreement between the City and Permittee.

50. EARNED SAFE AND SICK TIME ACT. Permittee shall comply with the Earned Safe and Sick Time Act, also known as the Paid Sick Leave Law, as set forth in the NYC Earned Safe and Sick Time Act Concession Agreement Rider attached hereto as **Exhibit A.**

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EXHIBIT A**NYC EARNED SAFE and SICK TIME ACT CONCESSION AGREEMENT 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) 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 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.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time

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

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 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.

EXHIBIT B

OPERATING HOURS AND COURT ASSIGNMENT FORM

Tennis Pro Name: _____

Park: _____

Permit #: _____

Hours of Operation:

Monday: _____

Tuesday: _____

Wednesday: _____

Thursday: _____

Friday: _____

Saturday: _____

Sunday: _____

Court Assignment:

What tennis court are you assigned to when you are conducting tennis lessons?

EXHIBIT C:

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.

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 _____

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 8)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Parks and Recreation (“Parks”) pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with Zurab Tskhakaia for the Operation of Tennis Professional Concessions at Kaiser Park, Brooklyn, NY. The agreement will provide for a 5-year term. Compensation to the City will be Annual Fee(s): Season 1: \$500.00, Season 2: \$1,000.00, Season 3: \$1,500.00, Season 4: \$1,700.00, Season 5: \$2,000.00

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

11/13/2024

Signed: _____

Title: City Chief Procurement Officer

Date: _____