



**Parks, Recreation  
and Historic Preservation**

**REQUEST FOR PROPOSALS X001411**

**OPEN FOOD MARKET CONCESSION**

**Marsha P. Johnson State Park  
Brooklyn, NY**

**RFP Released: Tuesday, March 2, 2021  
Proposals Due: Wednesday, March 31, 2021 at 3:00pm**

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## **I. STATE PARKS MISSION & GOAL**

The mission of the New York State Office of Parks, Recreation, and Historic Preservation (“State Parks”) is to provide safe and enjoyable recreational and interpretive opportunities for all New York State residents and visitors and to be responsible stewards of our valuable natural, historic, and cultural resources.

This request for proposals (“RFP”) seeks a private sector operator for the Open Food Market Concession at Marsha P. Johnson State Park (the “Park” or “Marsha P. Johnson”). The Open Food Market concession operation will consist of the selection of quality vendors offering menu items that are affordable and unique servicing the patrons that visit the Open Food Market on Saturdays during the operating season.

This RFP will result in the award of a new concession license agreement (“License”) to the successful party (“Licensee”) who will be responsible for the development and operation of the Open Food Market concession located at Marsha P. Johnson State Park. A Sample License agreement is provided in this RFP. The specific premises comprising the concession spaces are defined in this RFP and referred to as the “Licensed Premises” as defined in Section VI. The License will be in accordance with the terms and conditions set forth in this RFP, the Sample License, State Parks’ operating requirements and all applicable laws, rules and regulations.

Proposals responding to this RFP must be compatible with existing and planned Park operations and reflect excellence, professionalism, quality and value in concession offerings, customer service and selection and execution of improvement projects, equipment and furnishings. State Parks’ intent is to grant reasonable discretion to Licensee to achieve these goals, subject to compliance with the requirements of this RFP and the License, including State Parks’ reserved rights of approval.

## **II. LICENSE TERM**

The term of the License will commence upon contract approval by the Office of the State Comptroller, or on or about May 1, 2021, whichever is sooner, and concluding on December 31, 2025. Upon approval by the New York Office of the State Comptroller and written mutual agreement of State Parks and the Licensee, the term may be extended up to an additional five (5) years.

## **III. RFP TIMETABLE & SUBMISSION ADDRESS**

The following timetable is established for this RFP and is subject to change. State Parks may extend the due date for proposals by issuance of addenda to this RFP. Prior to submitting a proposal, respondents should check the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>) to confirm the issuance of addenda relating to the RFP schedule.

RFP Released:	Tuesday, March 2, 2021
<b>Proposals Due:</b>	3:00 P.M., Wednesday, March 31, 2021
Oral Presentations:	TBD, April 2021

**Proposals must be RECEIVED IN HAND by State Parks on or before the prescribed date and time at:**

NYS Office of Parks, Recreation & Historic Preservation  
Attn: X001411 Marsha P. Johnson Open Food Market Concession Proposal  
Concessions Management Bureau  
625 Broadway, 2<sup>nd</sup> Floor  
Albany, NY 12207

**Proposals not received in hand by State Parks at its Albany office by the official due date and time will be deemed untimely and returned.**

#### IV. CONTACT INFORMATION

##### A. DESIGNATED CONTACTS

Important guidelines regarding communications during this procurement are included in this RFP (Exhibit C: Procurement Requirement #1). Interested parties are advised to be familiar with these guidelines before contacting State Parks' staff as prohibited contact or communication may result in disqualification from participation in the RFP.

The following individuals are the **ONLY** Designated Contacts for this RFP process.

Daniel Munsell, Contract Management Specialist 2  
Kathy O'Brien Rose, Director, Concessions Management Bureau

E-mail: [Concessions@parks.ny.gov](mailto:Concessions@parks.ny.gov)  
Phone: 518-486-2932  
Mailing Address: New York State Office of Parks, Recreation and Historic Preservation  
Concessions Management Bureau, 2<sup>nd</sup> Floor  
625 Broadway, Albany, NY 12207

NOTE: Interested parties may communicate with State Parks' representatives to schedule and pose questions during a site visit, and confirm receipt by State Parks of submitted inquiries, the issuance of addenda, and to verify the timely submission of a proposal.

##### B. SITE TOUR

A site tour of the Licensed Premises is strongly recommended. Marsha P. Johnson State Park is open to the public on a regular schedule and is generally accessible year-round. A site tour for prospective respondents may be secured by contacting Andrew Bogardt, Park Manager 1 (e-mail: [Andrew.Bogardt@parks.ny.gov](mailto:Andrew.Bogardt@parks.ny.gov), telephone: #718-782-2731). State Parks will coordinate all scheduling and for efficiency may consolidate requests for site visits into group tours. Prospective respondents are advised that substantial renovations are currently taking place at the Park and access to specific areas may be inaccessible.

Parties should first carefully review the RFP and published addenda when scheduling a site visit. State Parks' tour staff provide only site orientation and information about the Licensed

Premises as set forth in the RFP and published addenda. To ensure a timely response to inquiries, substantive questions arising during a site visit must be submitted in writing to State Parks, preferably within three days of the visit.

#### C. QUESTIONS & INQUIRIES

All other inquiries and requests for information regarding this RFP must be made in writing and emailed to State Parks address listed in the “Designated Contacts” section. Individual responses will not be provided. State Parks will provide written responses to questions in the form of one or more addenda to the RFP which shall be published on the NY State Contract Reporter website (<https://www.nyscr.ny.gov/>). Such official addenda are the only authorized method used to communicate substantive information, including the clarification or modification of the timeline, terms, or other requirements of this RFP.

### V. BACKGROUND

#### PARK HISTORY

On August 24, 2020 the Park formerly known as East River State Park, was dedicated to the late LGBTQ+ civil rights activist Marsha P. Johnson on her 75<sup>th</sup> Birthday and became the first state park in New York to honor a LGBTQ+ person and transgender woman of color.

Marsha P. Johnson State Park is a seven-acre waterfront park located along the East River in the Williamsburg neighborhood of Brooklyn. It offers visitors a stunning view of the Manhattan skyline, a delightful play area, and the green space provides many opportunities for recreation and relaxation. As the site of a 19th century shipping dock, visitors to Marsha P. Johnson State Park may also discover unique historical remnants like old cobblestone streets and railroad tracks embedded in concrete. Interpretive signs describe the site’s rich history. The park preserves and protects the many natural and historical resources along this beautiful urban waterfront. In addition to the great views of the East River and Manhattan, the park offers a native meadow, historic rail yard remnants, passive recreation, dog run, picnicking, environmental education programs, a lovely small beach, and a weekly outdoor prepared food market. The park is free and open to the public.

The very popular outdoor food market takes place every Saturday typically from April to October and offers visitors the ability to explore and try dozens of different food vendors. In addition to the weekly food market, two non-food events have historically been held at the Park annually, each taking place in the Spring and Fall. The weekly events attract thousands of visitors.

#### LICENSED PREMISES & CURRENT STATUS

The Open Food Market concession premises consist of two concrete platforms (B & A) in an open-air setting located at the south end of the Park. Platform B is approximately 468’ x 89’, or 41,652 square feet. Platform B which runs parallel with N 7<sup>th</sup> Street is used for vendor tents and mobile units. There are 10 electric access points, each with 16 outlets, along the North 7<sup>th</sup> Street Fence; Vendors stationed along the fence may connect to the electric access points. Vendors not stationed along the fence are prohibited from connecting to the electric access points, generators are permitted to be used on Platform B.

Platform A is approximately 397' x 89', or 35,333 square feet and is used for spill over crowds with picnic tables located on this platform for patron use, equipment is prohibited on Platform A. Both platforms are easily accessible for park patrons by walking paths with surrounding green space. Park Maps depicting the location of the Licensed Premises are provided in RFP Exhibit B. There is no equipment provided with this concession operation.

#### **PARK IMPROVEMENTS**

State Parks is currently substantially renovating the Licensed premises and much of the Park including the addition of public art celebrating Johnson's life and her role in the advancement of LGBTQ+ rights. Prior to the 2021 operating season, both concrete platforms will be completely restored. A mural will cover the entire surface of Platform A displaying an image of Marsha P. Johnson along with additional historic and interpretive information about the LGBTQ+ civil rights movement. Additional artwork and interpretive materials celebrating Marsha P. Johnson's life, and the LGBTQ+ movement, will be installed on two long parallel historic gantry foundation walls creating a natural outdoor gallery.

A new 1,200 square foot container style park house will be built that will contain a classroom space overlooking the park, public bathrooms, park ranger contact station, and a small maintenance storage area. This new building will reflect the rail-to-barge shipping history of the site. In addition, the site wide renovations include installation of a storm water management system and pathway improvements throughout the park.

#### **BUSINESS HISTORY**

The Open Food Market concession has historically operated on an annual permit basis. The Open Food Market did not operate in 2020 due to COVID-19 restrictions.

### **VI. SCOPE OF CONCESSION**

This RFP invites proposals to operate a high-quality diverse Open Food Market operation at the Licensed Premises commencing in June 2021. The Open Food Market has historically drawn 2,000 - 15,000 attendees per event, Licensee shall contemplate the appropriate size and scale of this concession operation as the intention of this opportunity is to successfully manage the Open Food Market within the limits of the Park and surrounding community.

Licensee is expected to establish and operate under a sustainable business plan and philosophy that encourages, attracts, accommodates, and facilitates excellence in an Open Food Market operation providing a wide selection of food vendors and customer service executed in harmony with existing Park uses and schedules. The Open Food Market Concession shall be open every Saturday from starting the first weekend in April and ending the last weekend in October of each year. Please note that in year 2021 the concession operation will begin in June due to Park renovations. In coordination with the Park Manager the hours of operation shall be as follows: equipment load-in and staging (7am-10am); Food Market open to patrons (11am-6pm); equipment load-out and clean up (6pm-9pm). The Licensee will have use of the Licensed Premises only during the hours of operation of the Open Food Market and the Licensed Premises is to be completely vacated at the conclusion of each permitted event.



Licensee shall be responsible for the scheduling, set-up, operation, management, clean-up, and all other aspects of the weekly Open Food Market and any other permitted event. Licensee shall provide necessary security personnel at the entry points to the Open Food Market. At least thirty (30) days prior to the commencement of the first event, Licensee shall submit to State Parks for State Parks' review and approval a written operations plan for event-related staffing, security, crowd control, trash collection in and around the vicinity of the Park, and procedure for following all state and local public health regulations and guidelines including pandemic related measures.

Vendors will need to use a smartphone or tablet with a mobile credit card reader in order to complete credit card transactions. Alcohol sales are permitted at a designated location within the Licensed Premises with prior approval by State Parks and in accordance with the criteria set forth in the License.

There are occasional dates State Parks hosts annual events that coincide with the Open Food Market Concession that utilize a portion of Platform A, these events shall be coordinated in advance between State Parks and Licensee. Additionally, the Licensee may be permitted to hold additional events with prior written approval by State Parks.

Licensee must participate and collaborate in good faith with New York's Taste NY initiative. Taste NY was launched by Governor Andrew Cuomo in 2013 to promote New York's food and beverage heritage and related industries. The program is overseen by the Department of Agriculture and Markets and has created opportunities for local products to be showcased at appropriate state facilities and large public events such as the PGA Championship and the Great New York State Fair. In this context, to the fullest extent feasible, Licensee is expected to embrace, promote and incorporate core aspects of the Taste NY initiative in the operation of the Licensed Premises.

Licensee is permitted to store a refrigerated container on Platform B. If stored during the off season from November 1<sup>st</sup> - March 31<sup>st</sup>, Licensee shall pay State Parks \$2,000 per month.

For additional special operating requirements relating to event booking and scheduling, event staging and security, equipment storage, comfort stations, and parking please refer to Section 8 of the attached Sample Draft License.

## **VII. BUSINESS CONSIDERATIONS**

- A. **Due Diligence:** Respondents must rely on independent research and investigations for all matters relating to development of proposals, including business case, market projections, revenue and cost assessments, construction plans, facility improvements, etc. The Licensed Premises will be made available to Licensee in "as is, where is" condition at commencement of the term.
- B. **Sample License:** A Sample License is annexed to this RFP as Exhibit "D" and represents the contract template and substantially all material terms and conditions of the License to be awarded to the successful respondent. The License will be tailored to the successful proposal to the extent there is no substantial conflict with the RFP and Sample License. The License is a state contract subject to the independent review and approval of the New York Office of the Attorney General

and Office of the State Comptroller. Accordingly, a respondent should review the Sample License carefully when preparing a proposal as there are limited opportunities to negotiate language or change the material terms and conditions set forth therein.

- C. Repairs & Maintenance: Proposals must contemplate that all repairs and maintenance of the Licensed Premises is the sole responsibility of the Licensee. State Parks will remain responsible for structural elements of the concrete platforms and systems outside the Licensed Premises.
- D. Vendors, Menus & Pricing: Proposals are to include a plan on procuring a wide variety of food vendors that demonstrates quality, variety of menu items and price points to accommodate a range of food and beverage clientele. Licensee is expected to obtain Food Vendors who incorporate locally-sourced foods, food products, and other items produced in New York. State Parks encourages proposals that reflect the Park's location. All Open Food Market food vendors are required to supply compostable flatware and containers and shall comply with State Parks policies restricting or prohibiting the use of polystyrene (Styrofoam) and single use plastics as set forth in the Sample License.
- E. Reporting & Data Access: Licensee shall provide, utilize, and afford State Parks with meaningful access to books and records of account in accordance with generally accepted accounting principles and procedures used for generating daily, weekly and monthly reports that clearly detail, gross receipts, taxes, license fees, sponsorship revenue, transaction types, and any other relevant business data that may be reasonably specified by State Parks.
- F. Ownership & Taxes: There are no real estate property taxes associated with the Licensed Premises. Capital repairs and improvements funded by Licensee become the property of the State upon completion of the work and acceptance by State Parks. Licensee may utilize State Parks' sales tax exemption for pre-approved purchases of building materials and other tangible personal property purchased for capital improvement work. Licensee is responsible for payment/compliance with all applicable state and local tax requirements, including sales tax.
- G. Public Work: Any construction or capital improvement project undertaken by Licensee at the Licensed Premises is presumptively a "public work" and subject to the New York Labor Law, including prevailing wage and other requirements. The New York State Uniform Fire Prevention and Building Code and other applicable federal and state laws, rules, codes and regulations and executive orders apply to construction, including without limitation those relating to the Americans with Disabilities Act, energy efficiency and "green" initiatives. A respondent should carefully investigate the cost implications of these requirements in developing a proposal.

#### **RFP REQUIREMENTS**

All materials in a proposal submitted in response to this RFP become State Parks' property without return obligation. All determinations of sufficiency and completeness of a proposal and its compliance with the requirements of this RFP and the eligibility or qualification of a respondent shall be in the sole discretion of State Parks.

**VIII. FINANCIAL REQUIREMENTS**

A proposal must demonstrate sufficient financial resources and professional capacity to design, develop, construct, promote, operate, and maintain the Licensed Premises in top-quality condition. Proposals must include the following:

- A. Bid Security Deposit: Proposals must be accompanied by a certified or bank check in the amount of Five Thousand (\$5,000) Dollars payable to “NYS Parks” to serve as bid security. If the required bid security is not included, the proposal will be disqualified and returned. The bid security deposit will be returned upon contract execution.
- B. Required Minimum License Fee: The required minimum fee (“License Fee”) is \$6,200 paid annually. If a respondent does not offer at least the required minimum License Fee, the proposal will be disqualified and returned. Respondents may provide an escalating or enhanced license fee above the required minimum fee; but an enhanced or escalating fee must be set forth in the financial proposal form, or it will not be considered in the evaluation of the financial return to State.
- C. Park Improvement Fee: For each event held, Licensee shall pay \$5,000 to State Parks for the purpose of providing improvements to enhance the park experience.
- D. Operations, Maintenance & Repairs: Licensee is completely responsible for all operations, maintenance, and repair costs relating to the Licensed Premises as set forth in the Sample License.
- E. Trash Removal & Utilities: Licensee will be responsible for the cost of recycling and refuse removal and will be paid directly to the provider. Licensee must provide an adequate number of waste receptacles in and around the vicinity of the Park. State Parks encourages the Licensee to participate in NYC Department of Sanitation’s Adopt a Basket Program. Licensee is solely responsible for all other necessary grease or specialty waste services and disposal including proper disposal of charcoal, and for all other utility services at the Licensed Premises.

Licensee is solely responsible for the costs of electricity used in connection with the electric access points located along the North 7<sup>th</sup> Street Fence as direct billed by provider. Licensee shall be responsible for providing all other necessary electrical power sources at the Licensed Premises, generators are permitted on Platform B.

- F. Insurance Coverage: Licensee shall procure and maintain in full force and effect minimum commercial liability and other insurance coverage as specified in the Sample License.
- G. Bonds: Licensee will be required to procure and maintain a performance bond, letter of credit, or provide other form of security acceptable to State Parks. The principal value of the performance bond or security shall be equal to the sum of the projected annual License Fee, Park Improvement Fee, and any other financial obligation of License, for the first full year of the term.

## IX. GUIDANCE ON FORM & CONTENT OF PROPOSALS

Proposals should clearly and concisely state the unique capabilities, experience, and strengths of the respondent, and demonstrate capacity to satisfy the requirements and objectives set forth in this RFP. A complete proposal must include and address the following elements:

- A. Duly completed and executed Required Forms & Clauses (Exhibit “A”) including the Proposal Checklist, Financial Proposal Form, and Business History Form with supporting materials.
- B. A detailed narrative explaining the vision and philosophy for the Open Food Market concession operation and amenities to be offered at the Licensed Premises. Concept drawings, renderings, and site plans and other supportive and demonstrative materials are encouraged. The following components are required:
  - 1) Business plans: Identifying and accounting for all costs and expenses projected by Licensee, including without limitation for capital investment, operating, maintenance, utilities, marketing and promotion; projected revenues and pricing assumptions; and any contemplated partnerships, sub-licenses and sponsorships.
    - a. A *pro forma* projection must be itemized with financial projections for each year of the term with anticipated cash flows, and details of revenues and expenses, including proposed capital, operations and maintenance costs. All assumed or anticipated taxes, tariffs, grants, energy credits or other governmental benefits must be disclosed and included in the *pro forma*. Financing contingencies, and assumptions or conditions that may impact revenues or expenditures should be clearly disclosed in notes.
    - b. *Pro forma* projections must incorporate the proposed License Fee, Park Improvement Fee, utility payments, and all other financial obligations of the Licensee.
    - c. The *pro forma* shall be in Excel spreadsheet format and submitted with the proposal in hard copy and saved on a flash drive.
  - 2) Operations & Maintenance plans: Description of a comprehensive plan to successfully manage, operate, and maintain the Licensed Premises, including all business elements, pricing, security, operating schedules, plans for staffing and training programs, marketing and promotion strategies, improvements to community health and wellness, etc. Description of respondent’s approach to safety, quality control and compliance, inspection and maintaining applicable code and industry certifications, and the maintenance, upkeep of the Licensed Premises.
- C. **A respondent must clearly disclose the intent to form a new legal entity to contract as Licensee with State Parks if selected for award. Failure to make such disclosure in the proposal may result in delay or non-approval of the License by State control agencies.** Proposals must include substantive information in the form of resumes and/or professional histories demonstrating the relevant background, education, expertise and/or experience of principal members of the respondent’s organization, project team, management and operating partners and key participants. Materials including an organization chart or other documents identifying the corporate composition and ownership of the respondent and any new entity to be formed, its current or intended business

structure, operational chain of command, and any other underwriting investors, participants, partnerships or joint ventures.

- D. Evidence of open food market and/or event management operating experience at a facility of comparable scope and scale to the Licensed Premises; including a detailed description of any food market venues owned or operated by respondent or its owners or principals for the last five (5) years.
- E. A minimum of three (3) current references relevant to the food market and event management industry. Examples of preferred references include a financial institution that has extended credit to the respondent, industry entities with which relevant business has been transacted, and/or a commercial landlord or government entity from which the respondent has leased or licensed property or provided services in the open food market and/or event management industry.
- F. A current verified financial statement and/or other commercially reliable written evidence of the respondent's good credit, secure financial standing, and capacity to perform in accordance with the terms of the License. Respondents are to provide evidence of capacity to procure required bonds and insurance in the form of letters of intent or good standing from a financial institution, insurance company or broker, and/or surety.

## **X. PROPOSAL SUBMISSION INSTRUCTIONS**

A complete proposal is due before the deadline established for this RFP. A proposal must be submitted in writing to the address listed in Section III ("RFP Timetable & Submission Address") in accordance with the requirements, terms, and conditions of this RFP. Proposals that are contingent or conditioned or that include a modification of any Required Forms may be disqualified.

**Submit three (3) printed copies of the complete proposal, including all attachments, enclosures, and required forms and one (1) flash drive with the complete proposal in Adobe PDF format and all *pro forma* as an Excel spreadsheet document.** Original signatures are required on all copies of the proposal and required forms. The proposal must be bound or stapled originals, typewritten, two-sided, and on 8½" x 11" sized paper with numbered pages. Please do not submit a proposal in plastic sleeves or three ring binders.

## **XI. PROPOSAL REVIEW AND ORAL PRESENTATION**

State Parks may utilize all submitted materials and all public information sources to evaluate the proposal and capabilities of a respondent. State Parks will review proposals for completeness and compliance with the terms and conditions of this RFP and may request from any respondent, at any time during the selection process, additional information, clarification, or confirmation of the proposal.

Respondents will be afforded an opportunity to make an oral presentation to assist an agency Review Panel in its evaluation and scoring of proposals against the selection criteria set forth herein. State Parks will contact qualifying respondents to schedule presentations within two weeks of the deadline for submission of proposals.

## **XII. EVALUATION OF PROPOSALS & SELECTION CRITERIA**

Proposals are evaluated by a Review Panel based on quality and content, not length. The License will be awarded to the respondent that achieves the highest score best demonstrating relevant experience and expertise; best responds to this RFP; offers the best value to New York State; and will best serve the public interest. The respondent selected for award must be determined to be a responsible vendor by the Office of the State Comptroller as set forth in the Procurement Requirements of this RFP. State Parks reserves the right to reject all proposals, and to waive technicalities, irregularities and omissions or solicit new proposals if in State Parks' judgment the best interests of the State will be served.

Panelists score proposals in two steps – first, prior to the oral presentation each panelist gives the proposal preliminary scores based upon the written proposal; second, after the oral presentation, panelists may adjust their preliminary scores based upon the oral presentation. Only the post-oral presentation scores are counted towards the panelist's technical score for a proposal.

Respondents should carefully review the objectives, expectations, and requirements of this RFP and its addenda, the Sample License, and all exhibits and attachments. State Parks' Review Panel evaluation is based on a 100-point scoring system; evaluation criteria for scoring are as follows:

### **Category A: Background & Experience - 40 Points**

- A. Demonstrated ability to establish, start, and maintain a sustainable high-quality Open Food Market operation in a public park or similar setting: 20 points
  - 1) Examples of other successful public and/or private projects comparable in size, scale, and complexity to the License Premises. Experience establishing a successful and financially viable Open Food Market venue and related service operations in a public park setting.
  - 2) Successful and sustainable economic and operational performance in current and previous projects providing top quality visitor experiences and customer service standards through management of an Open Food Market venue and other special events.
  - 3) Past performance establishing and building a pool of high-quality food vendors, customer loyalty, and operational flexibility including experience in managing single day events including but not limited to event set up, take down, and clean up in a seasonal food market industry.
  
- B. Personnel qualifications and experience: 10 points
  - 1) Managerial capacity and organizational structure; depth of management personnel and tenure and success in the open food market and event management service industry.
  - 2) Qualifications of key staff and team members, including managers, consultants, marketing and sales personnel and operations and program personnel. Recruitment and retention and of experienced and qualified staff, as demonstrated by current/past performance, references, and resumes.
  
- C. Financial and business capacity to execute the proposal: 10 points
  - 1) Available assets, equipment, facilities, organizational and personnel resources, and expertise. Record of achieving sustainable profitability and goodwill in managing an Open Food Market enterprise similar to the concession operation.

- 2) Access to external financial resources including credit, equity, bonding and/or other operational and capital support in consideration of other business commitments.

**Category B: Response to the RFP - 35 Points**

- A. Strength of the proposal, vision, philosophy, and commitment to develop, operate, and maintain excellence in managing the Open Food Market and event coordinator services at the Licensed Premises, and deliver sustainable, efficient, quality, and consistent customer experiences: 15 points
  - 1) Concept for the Open Food Market Concession. Innovation in service concepts including the selection of food vendors and related menu and merchandise offerings.
  - 2) Onsite management, staffing structure, security, and operating schedule.
  - 3) Operating and service standards, including schedule of operation, event coordination, including sound and efficient management and operating practices.
  - 4) Operational plans for the staging, set-up and take-down, trash removal, sanitary stations, and storage at the Licensed Premises.
  - 5) Ability to quickly adapt and respond to changes in operational demands, service offerings, and coordination with local and state regulations and guidelines.
  - 6) Selection and management plans for food vendor operators with a focus on variety including locally-sourced fresh food, and Taste NY product concepts.
  - 7) Description of community health and wellness improvements.
- B. Business Development and Public Image: 10 points
  - 1) Capacity to monitor and respond positively to patron demand and new trends.
  - 2) Customer service standards, programs, and goals.
  - 3) Appropriateness of proposed Open Food Market operations to the Park setting.
- C. Business Plan: 10 Points
  - 1) Quality, accuracy, specificity, and presentation of the business plan and proposed operating budget, *pro-forma* projections, including consideration of assumptions, contingencies, conditions and financial requirements of the RFP.
  - 2) Excellence in concept/design and furnishing of the Licensed Premises, including sustainability, energy efficiency, consistency with meeting the program goals of the RFP and serving a wide range of park visitors.
  - 3) Financial feasibility and sustainability of the operating proposal for the Open Food Market Concession over the term.

**Category C: Return to the State (“RTS”) - 25 Points**

The value of the proposed License Fee as described in Section IX, B., comprise the RTS. A minimum License Fee equal to a flat annual fee of \$6,200 is required. A respondent must set forth the proposed License Fee on the Proposal Form. A respondent may offer an additional License Fee above the required minimum; however, fee offers that are not clearly expressed in writing on the Financial Proposal Form are not considered in the evaluation of RTS and calculation of points for scoring Category C.

### SCORING PROCESS

Proposals are evaluated on the criteria in Categories “A” and “B” and awarded points by State Parks’ Review Panel. Category “C” (representing the RTS) is calculated by the Concessions Management Bureau and points are awarded as follows: the proposal offering the highest RTS is awarded the full 25 points allocated to Category “C.” The points awarded to competing proposals are assigned by calculation of the relative value of the competing proposals’ RTS expressed as a percentage of the highest RTS, and then multiplying that percentage by 25 (the total points available in Category “C”). For evaluative purposes, decimal points are rounded down to whole numbers.

The respondent submitting the proposal with the highest aggregate point score of all three categories will be selected for award of the License. If the scoring process results in a numerical tie, the proposal receiving the highest combined point score from the sum of Categories “A” and “B” will be selected for award. If State Parks is unable to reach agreement on the License with the selected respondent, the respondent with the next highest aggregate score will be selected for award. All respondents will be notified of the results and have an opportunity to be debriefed by State Parks after the scoring process is complete.

### BID PROTEST PROCEDURES FOR SOLICITATIONS

It is the policy of the Office of Parks, Recreation and Historic Preservation (State Parks) to provide respondents with an opportunity to administratively resolve disputes or inquiries related to State Parks contract awards. Respondents are encouraged to seek resolution of disputes through consultation with the Designated Contact(s). After being notified of the results of this contract opportunity, any entity or individual that participated in the procurement may submit a protest of the resulting contract award. State Parks reserves the right to suspend, modify, or cancel this procurement at any time during the procurement process. State Parks also reserves the right to waive or extend the deadlines in this procedure.

#### **Submission of Formal Written Protests**

Protests must be received by the Designated Contact no later than five business days after a debriefing or 10 business days after the written notice of selection or non-selection for contract award, whichever is later. Protests must be submitted in writing, clearly marked as a protest on the envelope or in the email subject line, and include the following information:

1. Solicitation or contract number
2. Name, address, email address and telephone number of the filer
3. Detailed statement of the legal and factual grounds for the protest
4. Statement of the relief requested
5. Copies of relevant documents

#### **Agency Response**

Within 30 business days of receipt of a protest, State Parks’ protest officer (the Director of Audit or her designee) will respond with a protest determination stating the agency’s decision on the protest and the reasoning on which it is based. In making a determination, the protest officer will consider the legal



and factual grounds stated in the protest, consult with the Designated Contact and appropriate program staff, and review all relevant documents.

**Finality; Appeal**

For contract opportunities subject to the approval of the Office of the State Comptroller, the protesting party may appeal Parks' protest determination to the Office of the State Comptroller in accordance with the regulations contained in Part 24 of Title 2 of the New York Codes, Rules and Regulations. For contract opportunities that are not subject to the approval of the Office of the State Comptroller, Parks' protest determination is the conclusive and final determination of the protest. Nothing in these bid protest procedures is intended to limit or impair the rights of any respondent to seek and pursue remedies of law through the judicial process.

**XIII. MODIFICATION/WITHDRAWAL/REJECTION OF PROPOSALS**

Modification or withdrawal of a proposal must be in writing, dated and signed by the signatory to the original proposal submission. The modification or withdrawal must be submitted in a sealed envelope clearly marked "Modification [or Withdrawal] of X001411 Marsha P. Johnson State Park Open Food Market Concession Proposal Submitted by [respondent]."

State Parks reserves the right to reject proposals, postpone, or cancel this RFP, to waive technicalities, irregularities and omissions, request additional information or clarification of a proposal, or solicit new proposals if, in its judgment, the best interests of New York State will be served.

**XIV. PROCUREMENT REQUIREMENTS**

A respondent is responsible for reviewing and understanding all listed Procurement Requirements provided in Exhibit C and The Standard Clauses for New York State Contracts provided in Appendix A of the Sample License.

- 1) PR #1: Summary and Implementation Guidelines For §139-J and §139-K of State Finance Law
- 2) PR #2: Freedom of Information Law (FOIL)
- 3) PR #3: Office of the State Comptroller Review
- 4) PR #4: Conditions, Terms, Limitations, and General Information

**ATTACHMENTS & EXHIBITS FOLLOW**

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NO BID LETTER

Parties that **DO NOT** submit a proposal are respectfully requested to return this **No Bid Letter** to the address below or email a completed scanned copy to [concessions@parks.ny.gov](mailto:concessions@parks.ny.gov). Thank you.

**DO YOU WISH TO REMAIN ON OUR BIDDING LIST?**  YES  NO

---

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

Director, Concessions Management Bureau  
NYS Office of Parks, Recreation and Historic Preservation  
625 Broadway 2<sup>nd</sup> Floor, Albany, NY 12207

**Re: RFP X001411 Marsha P. Johnson Open Food Market Concession  
NYC Region**

We will not submit a proposal for the above-referenced Request for Proposals for the following reason(s):

- 1)  Not enough time to respond to the RFP.
- 2)  Not the business we are interested in pursuing.
- 3)  Not the location we are interested in serving.
- 4)  The RFP is too complicated to understand.
- 5)  The RFP has too many requirements.
- 6)  Other: (please be specific)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Name: \_\_\_\_\_

Firm name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: \_\_\_\_\_

Email Address: \_\_\_\_\_

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**EXHIBITS**

**A) REQUIRED FORMS & CLAUSES ..... Page 19**

Proposal Completion Checklist

Attachment #1: Financial Proposal Form

Attachment #2: Public Officers Law Certification

Attachment #3: Non-collusion Certification

Attachment #4: Business History Form

Attachment #5: SFL § 139-l and Executive Order #177 Certification

**B) PARK MAP DEPICTING LICENSED PREMISES.....Page 33**

**C) PROCUREMENT REQUIREMENTS (PR) .....Page 35**

PR #1: Summary and Implementation Guidelines For § 139-J and §139-K of State Finance Law

PR #2: Freedom of Information Law (FOIL)

PR #3: Office of the State Comptroller Review

PR #4: Conditions, Terms, Limitations, and General Information

**D) SAMPLE LICENSE**

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**PROPOSAL COMPLETION CHECKLIST  
MARSHA P. JOHNSON STATE PARK OPEN FOOD MARKET  
CONCESSION**

**This Proposal Completion Checklist is the first page of the proposal.**

Submit THREE (3) copies and one (1) flash drive with the entire proposal in PDF including all required forms, supporting documents, and any additional attachments. Pursuant to the instructions in the RFP all proposals will contain the following:

<b>REQUIRED FORMS (Exhibit A)</b>	
_____	1) Proposal Completion Checklist with Complete Primary Contact Information (THIS PAGE)
_____	2) Financial Proposal Form
_____	3) Public Officers Law Certification
_____	4) Non-collusion Certification
_____	5) Business History Form with supporting materials
_____	6) SFL §139-1 and Executive Order #177 Certification
<b>PROPOSAL NARRATIVE</b>	
_____	7) Business plans, <i>pro forma</i> revenue and expense projections for the term in Excel format.
_____	8) Operations and maintenance plans
_____	9) Strategy for marketing and promotion
_____	10) Resumes and/or professional histories for key personnel
_____	11) Evidence of skill, experience, and capacity to execute the proposal
_____	12) Three (3) current business references
_____	13) Proof of financial security/bonding capacity for performance obligations
_____	14) Bid Deposit (certified or bank check for \$5,000 payable to "New York State Parks")

**Original Signatures in Black or Blue Ink on all Copies**

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

Name (Print/Typed): \_\_\_\_\_

Firm Name: \_\_\_\_\_

Address: \_\_\_\_\_

Email: \_\_\_\_\_ Phone #: \_\_\_\_\_

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**EXHIBIT A – REQUIRED FORMS  
ATTACHMENT #1: FINANCIAL PROPOSAL FORM**

**REQUEST FOR PROPOSALS X001411  
OPEN FOOD MARKET CONCESSION  
MARSHA P. JOHNSON STATE PARK**

THE NEW YORK STATE OFFICE OF PARKS, RECREATION AND HISTORIC PRESERVATION  
RESERVES THE RIGHT TO REJECT ANY OR ALL PROPOSALS.

**To Whom It May Concern:**

**I.** Pursuant to and in compliance with the instructions, conditions and terms set forth in the attached Request for Proposals (“RFP”), the License documents and the proposal submitted, the undersigned hereby offers to pay State Parks as follows:

**A) License Fee:** The undersigned shall pay to State Parks a License Fee equal to a flat annual fee as follows:

\$ \_\_\_\_\_ Dollars  
(Numerals) (Words)  
**(Minimum: \$6,200 Annually)**

Set forth any additional, enhanced, or escalating license fee offer below, attach additional sheets if necessary.

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**B)** Licensee shall abide by and meet all other financial and operational obligations required by the License, including without limitation undertaking:

1. For each event held, Licensee shall pay \$5,000 to State Parks for the purpose of providing improvements to enhance the park experience.
2. Licensee is responsible for all utilities as stated in Section IX. E. of this RFP.
3. Provision of specified insurance coverage.
4. Posting a performance bond.

**II.** The term of the License will commence upon contract approval by the Office of the State Comptroller, or on or about May 1, 2021, whichever is sooner, and concluding on December 31, 2025. Upon approval by the New York Office of the State Comptroller and written mutual agreement of State Parks and the Licensee, the term may be extended up to an additional five (5) years.

**III.** The undersigned hereby certifies review and compliance with the following documents:

- A) Financial Proposal Form
- B) Public Officer’s Certification
- C) Business History Form
- D) Non-collusion Certification
- E) SFL§139-l and Executive Order #177 Certification

**IV.** The undersigned has carefully examined the RFP and License documents and has carefully prepared its proposal; the undersigned agrees to perform pursuant to the License and to provide all services, labor, material and equipment necessary in connection therewith. The undersigned acknowledges that the foregoing terms present a reasonable opportunity for profit by the undersigned.

**\*NOTE: Proposals that are not signed and dated may be rejected.**

**Date:** \_\_\_\_\_ **SIGNED:** \_\_\_\_\_

**NAME (Print)** \_\_\_\_\_

Company Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Mailing Address (if different from street address): \_\_\_\_\_

\_\_\_\_\_

Federal I.D. Number: \_\_\_\_\_ Telephone Number: \_\_\_\_\_

Fax Number: \_\_\_\_\_ E-mail Address: \_\_\_\_\_

If respondent is a corporation, indicate officers, or if respondent is a firm, indicate members, or if respondent is a partnership, indicate partners.

NAME

LEGAL RESIDENCE

---

President/Member/Partner

---

Vice President/Member/Partner

---

Secretary/Member/Partner

---

Treasurer/Member/Partner



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**ATTACHMENT 2: PUBLIC OFFICERS LAW CERTIFICATION****The Following Prohibitions Pertain to the Sale of Goods and Services by State Employees to New York State Agencies Pursuant to the NYS Public Officers Law**

**A. Current employees of New York State** cannot sell goods or services valued at \$25 or more to **any** state agency, either as a private contractor or through a company in which that employee holds ownership of at least 10%, unless the procurement opportunity is first advertised in the NYS Contract Reporter and competitively bid, and there are no other conflicts presented that would violate any provisions of §74 of the Public Officers Law.

**B. Relatives** (defined as any person living in the same household as you and any person who is a direct descendent of your grandparents or the spouse of such descendant) of current State Parks' employees working at the park in which this concession is located may be barred from providing services to State Parks, depending on the specific circumstances. If this applies to any member of the proposing organization, please explain below.

**C. Former employees of the New York State Office of Parks, Recreation and Historic Preservation** (State Parks) cannot sell goods or services to State Parks under any circumstance for two (2) years following the date they leave Parks' employ. (This applies only to Parks and Parks' employees and does not preclude a former employee of another state agency from selling goods or services to Parks within two years following the last date of that person's state employment.)

**Please check (x) as appropriate, sign and date**

- A.** I am currently a state employee, and/or own at least 10% of the company that is being asked to provide goods or services to Parks.
- B.** I am a relative of \_\_\_\_\_, a State Parks' employee who works at the park in which this concession is located. The employee's title is \_\_\_\_\_ and his/her responsibilities are \_\_\_\_\_.
- C.** I am a former State Parks' employee, and my service with the agency ended less than two (2) years prior to the date of my signature below.
- D.** **None** of the above applies.

\_\_\_\_\_  
(signature)\_\_\_\_\_  
(date)\_\_\_\_\_  
(name printed)

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**ATTACHMENT 3: NON-COLLUSION CERTIFICATION**

The undersigned: recognizes that all information and material provided on or with this Information Regarding Qualifications and Financial Capability form and all other information and material submitted by the undersigned in connection with its Statement of Interest and/or Proposal are submitted for the express purpose of inducing the Office of Parks, Recreation, and Historic Preservation (“Parks”), governmental agency of the State of New York (the “State”) to award a contract to the undersigned; acknowledges that each of the Parks, the State and the State’s agencies and instrumentalities may, each in its sole and absolute discretion, by any means which it may choose, determine the truth and accuracy of all statements made therein; acknowledges that intentional submission of false or misleading information may constitute a felony under Penal Law §210.40 or a misdemeanor under Penal Law §210.35 or §210.45, and may also be punishable by a fine of up to \$10,000 or imprisonment of up to five years under 18 U.S.C. §1001; and states that the information submitted is true, accurate and complete.

By submission of this statement of interest, the Respondent and each person signing on behalf of the Respondent certifies, and in the case of a joint proposal each party thereto certifies as to his or her own organization under penalty of perjury, that to the best of his or her knowledge and belief:

- (1) The prices, amounts and material in this proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices, amounts and materials with any other Respondent or with any competitor;
- (2) Unless otherwise required by law, the prices, amounts and material that have been quoted in this statement of interest or subsequent proposal have not been/will not be knowingly disclosed by the Respondent and will not knowingly be disclosed by the Respondent prior to award, directly or indirectly, to any other Respondent or to any competitor, and
- (3) No attempt has been made or will be made by the Respondent to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

The Respondent hereby authorizes Parks and the State and their agents and instrumentalities to contact the Respondent’s bank(s) and credit references and any other persons identified in its submission, including without limiting the foregoing, all persons and entities identified in its Information Regarding Qualifications and Financial Capability form and any financial information, in connection with the proposal, and any and all other persons identified in any investigation conducted by or on behalf of the State, and obtain release of pertinent financial and other information, as well as to obtain verification of information provided by or on behalf of the Respondent.

\_\_\_\_\_  
Name of Respondent

\_\_\_\_\_  
Signature of Respondent

\_\_\_\_\_  
Signature of Officer

\_\_\_\_\_  
Title

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**ATTACHMENT 4: BUSINESS HISTORY**

This License shall be awarded to the responsible Respondent selected by State Parks in accordance with the RFP as affording the “best value” to the State of New York. “Respondent” means any firm, affiliate, owner, officer, major stockholder (5% or more shares) or any person involved with the bidding or contracting process.

A Respondent is required to complete and submit this questionnaire. The questionnaire shall be completed by the owner of a sole proprietorship or by an officer or duly authorized representative as officer of the firm, corporation or partnership submitting the proposal.

**Personal Information Notification**

The Office of Parks, Recreation and Historic Preservation is authorized to collect and maintain this information by Section 3.09 of the Parks, Recreation and Historic Preservation Law. The information will be used to determine the reliability and capacity of the respondent to perform the work required in the proposal. If the information is not complete, the proposal may not be considered. The information will be maintained in the files of the Concession Management Bureau, Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, NY, 12207, 518-486-2932. This information may be disclosed pursuant to the provisions of the Freedom of Information Act.

**(USE ADDITIONAL SHEETS IF NECESSARY TO FULLY ANSWER THE FOLLOWING QUESTIONS)**

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

1. Legal Name: \_\_\_\_\_

2. Address of Place of Business: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

3. Federal I.D. No. or Social Security No.: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

4. Respondent is organized as: \_\_\_\_ Sole proprietorship; \_\_\_\_ Partnership; \_\_\_\_ Corporation;

Other (*please describe*):

\_\_\_\_\_

- If a corporation, provide a certificate of incorporation.
- Provide written verification of authorization to conduct business in the State of New York.

5. As an attachment to this form or in the Proposal, provide the following information:
- A) Describe any training or experience that qualifies the Respondent to provide the services called for in this License. Provide relevant dates, locations, company names, etc.
  - B) Describe the design, management and implementation plan for performing the services called for in this License.
  - C) Provide other appropriate information, reflecting Respondent’s capacity and reliability to perform under the License.
  - D) Provide a current certified or verified financial statement and/or other commercially reliable written evidence of Respondent’s credit, financial standing and capacity to perform and finance the proposed capital investment in accordance with the terms of the License.

**All Respondents must answer questions 6 and 7. If a new business entity is formed to respond to this RFP or to execute the License, the questions shall be answered for each owner, principal or officer of the new business entity.**

6. Has Respondent ever had a bond or surety canceled or forfeited, or a License or permit issued by New York State or the State of New Jersey terminated?

Yes \_\_\_\_\_ No \_\_\_\_\_

If **YES**, state the name of bonding agency (if a bond), date, amount of bond and reason for such cancellation or forfeiture; or details regarding the termination (if a License or permit).

7. Has Respondent during the past seven (7) years filed for bankruptcy, or been declared bankrupt?

Yes \_\_\_\_\_ No \_\_\_\_\_

If **YES**, state date, court jurisdiction, amount of liabilities and amount of assets:

**The undersigned hereby certifies and affirms that the foregoing statements and all information provided herein are true and accurate. The undersigned also certifies and affirms that State Parks has made a Sample License available for their review and agrees to comply with the terms contained therein.**

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
TITLE

State Parks reserves the right to disqualify any proposal and/or terminate any License if it is determined that information provided to State Parks was intentionally omitted or falsified.

By signing this proposal, the Respondent(s) hereby give permission to State Parks to proceed with financial, credit and background checks as deemed necessary and prudent by State Parks.

**ATTACHMENT 5: SFL § 139-1 and EXECUTIVE ORDER # 177 CERTIFICATION****N.Y. State Finance Law § 139-1**

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that the bidder has and has implemented a written policy addressing sexual harassment prevention in the workplace and provides annual sexual harassment prevention training to all of its employees. Such policy shall, at a minimum, meet the requirements of section two hundred one-g of the labor law.

**Executive Order No. 177 Certification**

The New York State Human Rights Law, Article 15 of the Executive Law, prohibits discrimination and harassment based on age, race, creed, color, national origin, sex, pregnancy or pregnancy-related conditions, sexual orientation, gender identity, disability, marital status, familial status, domestic violence victim status, prior arrest or conviction record, military status or predisposing genetic characteristics.

The Human Rights Law may also require reasonable accommodation for persons with disabilities and pregnancy-related conditions. A reasonable accommodation is an adjustment to a job or work environment that enables a person with a disability to perform the essential functions of a job in a reasonable manner. The Human Rights Law may also require reasonable accommodation in employment on the basis of Sabbath observance or religious practices.

Generally, the Human Rights Law applies to:

- all employers of four or more people, employment agencies, labor organizations and apprenticeship training programs in all instances of discrimination or harassment;
- employers with fewer than four employees in all cases involving sexual harassment; and,
- any employer of domestic workers in cases involving sexual harassment or harassment based on gender, race, religion or national origin.

In accordance with Executive Order No. 177, the Bidder hereby certifies that it does not have institutional policies or practices that fail to address the harassment and discrimination of individuals on the basis of their age, race, creed, color, national origin, sex, sexual orientation, gender identity, disability, marital status, military status, or other protected status under the Human Rights Law.

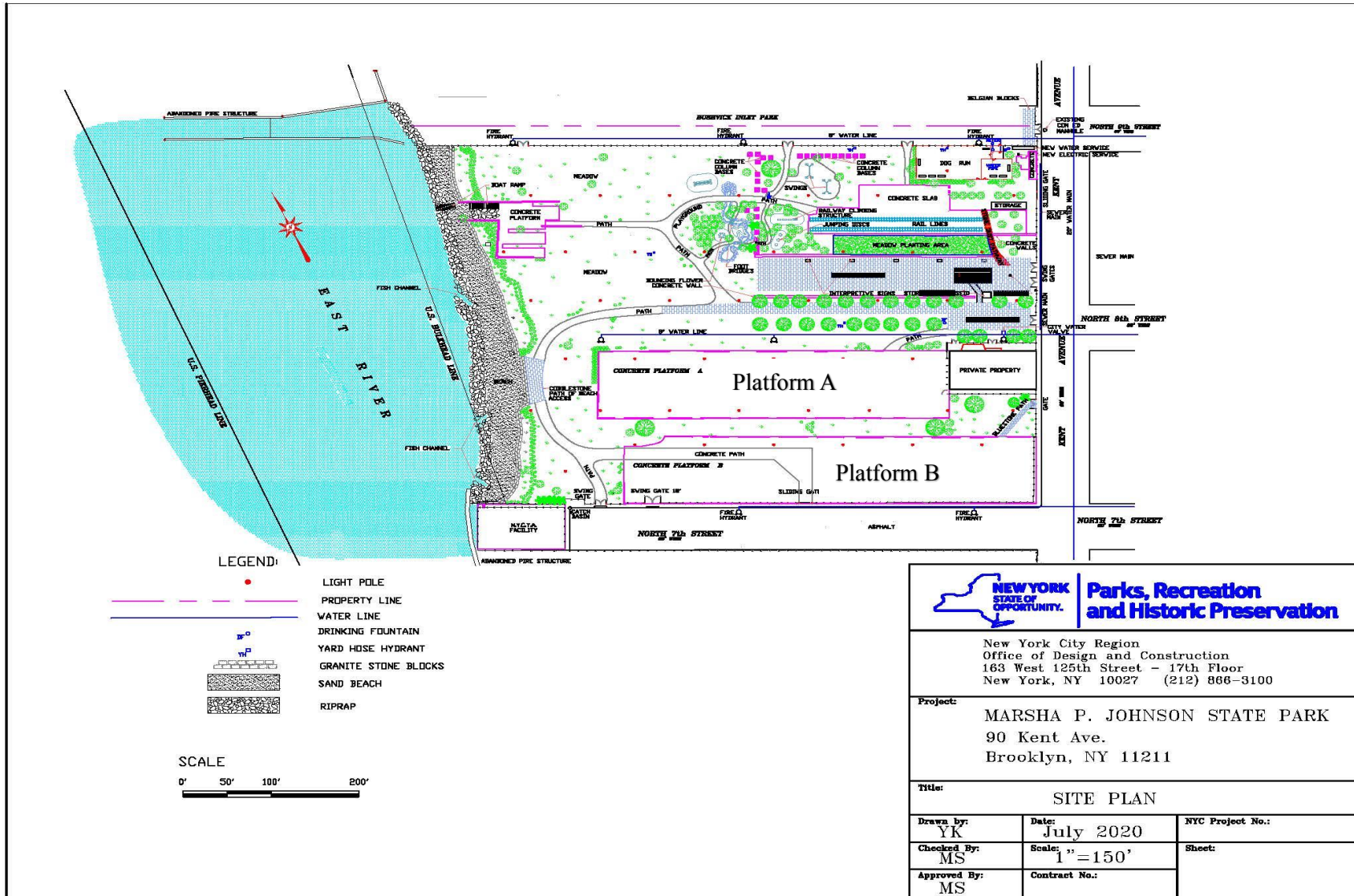
Executive Order No. 177 and this certification do not affect institutional policies or practices that are protected by existing law, including but not limited to the First Amendment of the United States Constitution, Article 1, Section 3 of the New York State Constitution, and Section 296(11) of the New York State Human Rights Law.

**By signing, you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of the above certifications and that all information provided is complete, true and accurate.**

Legal Business Name of Company Bidding:	
D/B/A - Doing Business As (if applicable):	
Bidder's Signature:	Printed or Typed Name:
Title:	Date:



EXHIBIT B – PARK MAP DEPICTING LICENSED PREMISES



Marsha P. Johnson State Park Mapped Improvements



**NV5** MARSHA P. JOHNSON STATE PARK  
Overall Site Plan

November 2020

## EXHIBIT C – PROCUREMENT REQUIREMENTS

### **PROCUREMENT REQUIREMENT #1:** *(Communication with State Parks during bidding and evaluation)*

#### SUMMARY OF AND IMPLEMENTATION GUIDELINES FOR § 139-j and §139-k OF THE STATE FINANCE LAW

**\* This summary is not intended to replace the need for persons to become familiar with the full requirements of the law. Please refer to the full text of the law to resolve any questions you may have with regard to your conduct under it.**

Section 139-j of the State Finance Law imposes restrictions on how a person may communicate with a governmental entity, such as the Office of Parks, Recreation and Historic Preservation (hereafter, referred as “OPRHP”), concerning a governmental procurement during a period of time called the “restricted period,” which is defined broadly as the period of time commencing from the earliest written notice announcing a government procurement until the award is approved by the comptroller.

These new requirements cover a wide range of government contracting transactions, including the purchase of a commodity, service, technology, public work, construction and revenue contract, or the purchase, sale or lease of real property or the acquisition or the granting of other interests in real property (hereafter referred as “governmental procurement or procurement contract.” Any person in the private sector (hereinafter referred to as “person”) interested in contacting OPRHP concerning anyone of these types of transactions is covered under the provisions of the new law, which limits the way that such person can communicate with OPRHP during the “restricted period.”

For every procurement OPRHP will designate an employee(s) that may be contacted for all aspects of the procurement. With very few statutory exceptions, you are required to communicate during the restricted period with this designated person or persons. If your communication can be inferred by a reasonable person to be an attempt to influence the procurement, by law you are required to only communicate with the designated person or persons. If your communication is interpreted as an attempt to influence the procurement, the designated person is required to record your name, address, telephone number, place of principle employment, and occupation of the person making the contact and inquire and record whether the person making the contact is a principle or was hired by the principle to make the contact. This recorded information must be retained in the procurement record.

If, however, you communicate with someone other than the designated person or persons and your communication can be construed by a reasonable person to be an attempt to influence the governmental procurement, and the communication is not otherwise listed as an exception to the law, this communication will be deemed impermissible per the terms of the law which requires that the communication be reported to OPRHP’s Ethics Officer for investigation. If a communication during the “restricted period” may be deemed an attempt to influence the procurement such communication may only be with the individuals designated by OPRHP.

It is the policy of OPRHP to interpret as broadly as possible what communications are intended to influence the governmental procurement and are not just those attempts to influence the procurement in such a manner that would be in violation of the ethical prohibitions against gifts or which would result in any violation of the Ethics Law. Communications of a nature that are in violation of the Ethics Law will be immediately reported to the Ethics

Officer for investigation regardless of whether the contact was made to the designated person or persons or someone else.

As referenced before, the law specifically permits certain types of contacts by persons to OPRHP concerning the governmental procurement. These are:

- the submission of written proposals in response to a request for proposal, invitation for bids or any other method for soliciting a response from interested parties;
- the submission of written questions to a designated contact, when all written questions and responses are to be disseminated to all persons interested in such procurement;
- participation in a conference where all interested parties are invited to attend;
- written complaints made to the General Counsel's Office of OPRHP concerning the timely response to issues posed to the designated person, provided that such written complaints are made part of the procurement record;
- communications where the contract award has been tentatively made and where such communications are necessary to negotiate the terms of the procurement contract;
- requests made to the designated person or persons to review the procurement award;
- written protests, appeals, or other review proceedings to either OPRHP or an outside agency.

Any contact alleged to be an impermissible contact under the law will be immediately referred to and investigated by OPRHP's Ethics Officer. The Ethics Officer shall promptly investigate the allegation by interviewing all employees or persons involved or who are believed to have information about the impermissible contact. If sufficient cause exists to believe that such allegation is true, the person being investigated shall be given notice that an investigation is ongoing and such person shall be afforded an opportunity to be heard in response to the allegation either by responding in writing or by providing a statement before the Ethics Officer, who shall record by appropriate means such statement for the record. The Ethics Officer shall keep a record of the investigation and shall make a written finding of the results of such investigation and report these findings to the Commissioner.

In addition, a finding by the Ethics Officer that a person has knowingly and willingly violated the law by making an impermissible contact shall result in a determination of non-responsibility and such person and all associated subsidiaries of such person shall not be awarded the procurement contract. The determination of non-responsibility shall also be forwarded to the Commissioner of the Office of General Services (or his or her designee), which by law is required to keep a list of such determinations for public inspection. Determinations of non-responsibility must be disclosed in all future responses to New York State procurements. With few exceptions, no procurement contract shall be awarded to any person who fails to disclose findings of non-responsibility within the previous four years.

February 2006

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## **PROCUREMENT REQUIREMENT #2:**

### **FREEDOM OF INFORMATION LAW (FOIL)**

State Parks is subject to the Freedom of Information Law (FOIL), which governs the process for the public disclosure of certain records maintained by State Parks (NY State Public Officers Law, Article 6 and regulations adopted pursuant thereto). In keeping with all submissions to State Parks, proposals and/or subsequent stages are subject to the FOIL process and accessible as public domain unless the Respondent secures an exemption.



Regarding exemption, Respondents that submit materials to State Parks in response to this RFP may request that State Parks exclude all or part of such material from public disclosure pursuant to Section 87(2) (d) of the Public Officers Law, on the grounds that the material contains trade secrets, proprietary information, or that the information, if disclosed, would cause substantial injury to the competitive position of the individual or firm submitting the information. Such exception may extend to information contained in the request itself, if public disclosure would defeat the purpose for which the exception is sought. **To ensure consideration of an exemption request, the request should be written, placed on the final page of the submitted proposal, and state in detail the specific reasons for the requested exception. It must also clearly specify the specific material submitted, or portions thereof, for which the exception is requested.** If State Parks grants the request for exception from disclosure, State Parks shall keep such material or portion thereof in a secure place.

If any Respondent submits information which it believes to be a trade secret or otherwise exempt from disclosure under FOIL, it must specifically identify such information and state in writing the reasons why the information should be exempt from disclosure. Notwithstanding the foregoing, the New York State and State Parks shall not be liable if either releases information, whether or not pursuant to FOIL which the Respondent believes to be a trade secret or detrimental to its business.

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### **PROCUREMENT REQUIREMENT #3:**

#### **OFFICE OF THE STATE COMPTROLLER REVIEW**

**The contract resulting from this RFP is subject to review and approval by the Office of the State Comptroller (“OSC”) pursuant to State Finance Law and the regulations issued thereunder. The contract shall not be valid and enforceable, nor shall State Parks have any liability of any kind arising from or in connection with this contract, unless and until OSC approval has been received.**

**Under New York State procurement policies, a “responsible vendor” is one that has the capacity to fully perform its contractual obligations, and the integrity to justify the award of public dollars. New York State Finance Law dictates that state agencies take reasonable steps to ensure that public contracts are awarded to bidders that are responsive and responsible, including the capability to meet bid requirements and fully perform contractual obligations, and possessing the integrity to justify the award of public dollars.** In short, businesses must demonstrate their vendor responsibility prior to the award of the contract. Prior to entering into contracts, New York State agencies must formally make a “responsibility determination” that is based upon a financial, legal, integrity, and past performance (“FLIP”) review of a prospective vendor. The FLIP review involves assessments of a company’s:

- Financial and organizational capacity;
- Legal authority to do business with the State of New York;
- Integrity of the owners, officers, principals, members and/or contract managers; and
- Past performance of the bidder on prior government contracts.

The selected company under this procurement must demonstrate its responsibility as a vendor and must maintain **responsibility** throughout the term of the agreement. For more information, visit the New York State Office of the Comptroller’s Vendor Responsibility website to download and complete the required Vendor Responsibility Questionnaire: ([http://www.osc.state.ny.us/vendrep/forms\\_vendor.htm](http://www.osc.state.ny.us/vendrep/forms_vendor.htm))

Responses to this RFP must be responsive to all the RFP requirements included herein and include a completed and notarized copy of a “Responsibility Questionnaire”. The Questionnaire may be downloaded at the following

links:

*For-Profit Entities:*

[www.StateParks.ny.gov/CorporateInformation/Data/RFPs/111511\\_VendorForprofit.pdf](http://www.StateParks.ny.gov/CorporateInformation/Data/RFPs/111511_VendorForprofit.pdf)

*Not-for-Profit Entities:*

[www.StateParks.ny.gov/CorporateInformation/Data/RFPs/111511\\_VendorNotforprofit.pdf](http://www.StateParks.ny.gov/CorporateInformation/Data/RFPs/111511_VendorNotforprofit.pdf)

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#### **PROCUREMENT REQUIREMENT #4:**

##### **CONDITIONS, TERMS, LIMITATIONS, AND GENERAL INFORMATION**

In addition to any other terms and conditions stated elsewhere, this RFP is subject to the following:

1. Responses and/or proposals will be accepted from principals only. No brokerage fees, finder’s fees, commissions, or other compensation will be payable by State Parks in connection with the selection of a Respondent. Respondent agrees to pay the commission or other compensation due to any broker or finder in connection with the transaction. A Respondent’s proposal is not assignable.
2. A Respondent will obtain its own independent legal, accounting, engineering, technical, etc. advice on all matters relating to site locations of interest, including, without limiting the foregoing: examination, review and verification of any information provided by or on behalf of New York State, State Parks, and/or its advisors; land and improvements constituting the Project site and adjacent to site locations of interest; all local laws, regulations and conditions that may affect the use and adaptive re-use transition of site locations of interest; and all other matters that may be material.
3. Responses will be prepared at the sole cost and expense of the Respondent. New York State and State Parks will not pay for or refund any costs and expenses incurred by any Respondent in responding to this RFP or subsequent selection stages or by any License following selection and/or designation. Submission of a proposal in response to this RFP is an undertaking by the Respondent to defend, indemnify and hold harmless New York State and State Parks from and against any and all expenses, damages or liability (including, without limiting the foregoing, attorneys’ fees and disbursements) arising out of any claim for such fees, commissions or other compensation made in connection with such Respondent’s response to this RFP or subsequent stage, selection (or non-selection) thereunder or execution (or non-execution) of a lease.

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**\*SAMPLE LICENSE FOLLOWS\***

## **CONCESSION LICENSE XOO1411**

### **Open Food Market Concession at Marsha P. Johnson State Park Brooklyn, New York**



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**CONCESSION LICENSE X001411**  
**OPEN FOOD MARKET CONCESSION**  
**MARSHA P. JOHNSON STATE PARK**

This agreement is dated \_\_\_\_\_, and is between the STATE OF NEW YORK, acting by and through the Office of Parks, Recreation and Historic Preservation (“**State Parks**”) and [LICENSEE LEGAL NAME] (“**Licensee**”), a [New York corporation].

**RECITALS:**

Section 3.09(2-a) of the Parks, Recreation and Historic Preservation Law, authorizes State Parks to contract for the operation and improvement of park facilities and concessions.

State Parks formally issued a request for proposals for a concession license to operate an Open Food Market Concession on Platform A & B at Marsha P. Johnson (the “**Park**”).

Licensee was the successful respondent and has agreed to assume responsibility for the operation of the Open Food Market Concession and related events.

Now, therefore, the parties agree as follows:

**Section 1. Contract Documents**

- (a) This agreement is comprised of the following documents, all of which are hereby incorporated by reference:
  - (i) Concession License X001411
  - (ii) RFP X001411 and any addenda thereto (the “**RFP**”)
  - (iii) Licensee’s Proposal and Proposal Form (collectively the “**RFP Response**”)
  - (iv) Attachment A – Description of the Premises
  - (v) Attachment C – Requirements for Capital Construction Projects
  - (vi) Attachment E – Insurance Requirements
  - (vii) Appendix A – Standard Clauses for New York State Contracts
  
- (b) In the event of any inconsistency in or conflict among the document elements of this agreement, such inconsistency or conflict shall be resolved by giving precedence to the document elements in the following order: (1) Appendix A, (2) Concession License X001411, including all attachments (3) the RFP, (4) the RFP response.

**Section 2. Term**

The initial term of this agreement begins on May 1, 2021 (the “**Commencement Date**”) and terminates on December 31, 2025 (the “**Expiration Date**”), subject to the approval of the New York State Office of the State Comptroller. Upon approval by the New York Office of the State Comptroller and written mutual agreement of State Parks and the Licensee, the term may be extended up to an additional five (5) years.

### Section 3. Grant of License

- (a) State Parks hereby grants to Licensee the right to use and occupy Platform A and B, including its structures, facilities, and associated property, as shown in Attachment A (the “**Premises**”) for the exclusive purpose of the Open Food Market Concession and related events as described in the RFP and proposed in the RFP Response (the “**Use**”).
- (b) Licensee acknowledges that the Premises are public, non-residential spaces within a State park and that for all purposes hereunder State Parks licenses the Premises “as is/where is” and without warranty. Licensee states that it has thoroughly examined and inspected the Premises that, unless and except as expressly set forth in this agreement, it has not relied upon any representation or statement of State Parks or its officers or employees as to the suitability of the Premises for the Use.
- (c) State Parks is not required to undertake any build-out or other preparation of the Premises for the Use. If any preparation is required to make the Premises suitable for the Use, Licensee shall perform such preparation at its own expense. If such preparation constitutes a Capital Project, such work is subject to the requirements of Section 23. Licensee shall not use any portion of the Premises that is in a condition unsafe or improper for the conduct of the Use.
- (d) Licensee shall not use any other portion of the Park or place any display tables, equipment, merchandise, or other items or property outside the Premises without the express written permission of the State Parks.
- (e) Licensee states that its RFP Response identified and accounted for all anticipated revenue sources and business opportunities sought to be captured by Licensee. Licensee shall not commercially exploit the Premises except through the Use. Notwithstanding the foregoing, State Parks may authorize new or additional revenue sources identified by Licensee during the term of this agreement and in such instance, Licensee shall pay State Parks an equitable portion of such additional revenue, as determined by good faith negotiations between the parties.
- (f) State Parks reserves for its sole benefit the right to authorize the installation of cellular telephone antenna and other related equipment at the Premises and the right to authorize the installation of any utility system at the Premises.
- (g) State Parks reserves the right to use the Premises without a facility rental cost for limited official events and purposes, subject to written notice to Licensee and Licensee’s prior or conflicting bookings.

### Section 4. Fees and Other Payments; Payment Bond

- (a) During the term of this agreement, Licensee shall, by check or wire transfer and by the 15th day of October of each year, pay the License Fee owed.
  - (i) In this agreement “**License Fee**” means a flat annual fee of [#####] dollars.
  - (ii) In addition to the License Fee, Licensee shall pay State Parks a Park Improvement Fee of \$5,000 per event for the purpose of providing improvements to enhance the park experience. Licensee shall, by check or wire transfer and by the 15<sup>th</sup> day of the month, pay the Park Improvement Fee owed for the previous calendar month.



- (iii) In this agreement “**Gross Receipts**” means the total amount received by or accruing to Licensee and its agents and employees, from all sales for cash or credit, for consumption or use on or in connection with the Premises of any goods or services (including without limitation, mobile or portable food and retail sales, catering, catalog, Internet, and telephone sales), including from Licensee’s contractors, by reason of the privileges granted under this agreement, less the following allowable exclusions and deductions:
  - (a) Excise, sales, or other taxes that are imposed upon the sale of goods or services and which are collected by Licensee;
  - (b) Refunds, discounts, items sold at cost, or other discounted per State Parks’ request, rebate, or allowances received by Licensee from wholesalers or suppliers, and refunds or other approved adjustments paid or given to patrons;
  - (c) Tips or gratuities that are included in the account or bill of a patron.
- (b) To secure the payment of the License Fee, State Parks may, in its sole discretion, require Licensee to provide an annual, renewable bond or letter of credit from a surety company or other security satisfactory to State Parks in the principal amount of [US\$###.00] (a “**Payment Bond**”) to be kept in full force and effect for the remaining term of this agreement.
  - (i) State Parks may, in its sole discretion, annually adjust the required principal amount of the Payment Bond to an amount not to exceed the combined total of the projected License Fee, Park Improvement Fee, and annualized estimate of any other financial obligations due to State Parks in the upcoming year.
  - (ii) Licensee shall not terminate or reduce any Performance Bond without the prior written approval of State Parks.
  - (iii) A Performance Bond provided under this section must (i) name State Parks as the sole beneficiary, (ii) guarantee the faithful payment by Licensee of the License Fee and other fees due, and (iii) require the issuer to give State Parks notice in writing not less than 30 days prior to the expiration date thereof of the intention not to renew the Performance Bond. The Performance Bond covering the final year of the term of this agreement must extend at least one business day beyond the date the final License Fee payment is due.
- (c) Licensee shall pay any other amounts due under this agreement as expressly provided for in this agreement or, if not specified, upon invoicing by State Parks.
- (d) Licensee is solely responsible for all fees and other amounts due until paid and delivered to State Parks.

## **Section 5. Capital Investment; Capital Bond (Intentionally Omitted)**

## **Section 6. State Equipment**

- (a) No State Equipment is provided for the Use.
- (b) Title to any equipment purchased by Licensee as part of a Capital Project or to replace any existing State Equipment will vest in State Parks upon installation and such equipment will be deemed State Equipment unless otherwise agreed to by State Parks in writing prior to the purchase. Such equipment

must be purchased new; State Parks shall not accept used equipment as part of a Capital Project or to replacement any existing State Equipment. However, for the sole purpose of achieving depreciation over the term of this agreement in accordance with general accepted account principles, Licensee may retain legal title to replacement State Equipment for the duration of this agreement, title to vest in State Parks upon termination of this agreement. Licensee shall update the written inventory promptly upon the purchase of any such equipment and shall inform State Parks of the same. State Parks may place its own inventory labels on all State Equipment.

- (c) Licensee shall not remove any State Equipment from the Premises except for disposal or repair approved in advance by State Parks.

## **Section 7. General Operating Requirements**

- (a) *Obligation to Operate.* Licensee shall undertake the Use.
- (b) *General Operating Standards.* Licensee shall conduct a first-class operation and shall furnish and maintain all necessary and proper equipment, fixtures, personnel, supplies, and materials required to do so. Licensee shall conduct all its operations in an orderly manner and so as not to annoy, disturb, or be offensive to other licensees or patrons of the Park. Licensee warrants that any food vendors, food products, merchandise, and other goods and services sold or kept for sale under this agreement will be of high quality and standards and will conform in all respects to applicable federal, State, and local laws, regulations, ordinances, and codes. All goods and services offered for sale must be in good taste and considered appropriate, proper, and consistent with the State of New York and State Parks' obligations and responsibilities to patrons of the Park. If in State Parks' judgement any good or service offered by Licensee is inconsistent with the image, policies, or reputation of the State of New York or State Parks or otherwise unsuitable, at State Parks request Licensee shall cease offering such good or service immediately.
- (c) *Housekeeping and Sanitation.* Licensee shall at all times keep the Premises in a clean and sanitary condition.
  - (i) Licensee shall keep all interior spaces within the Premises free from ants, flies, roaches, rodents, and all other insects and vermin its own cost and expense. Licensee shall keep use of rodenticide and other chemical pesticides to a minimum, consistent with State Parks' Pesticide Reduction Policy.
  - (ii) Licensee shall adhere to all applicable State and local health and sanitary codes, standards, and regulations, including sanitary standards established and issued by State Parks, at all times. If, during an inspection under Section 16 or at any other time, State Parks determines a violation of such codes, standards, or regulations exists, it will inform Licensee in writing. Immediately upon receipt by Licensee's on-site management of any notice, inspection report, and/or citation issued by any State or county health agency, Licensee shall forward a copy of the same to State Parks' Regional Headquarters and Counsel's Office. If Licensee fails to correct any health or sanitation deficiency within two days of notice, either by State Parks or any State or County health agency, State Parks may correct the deficiency and Licensee shall pay the actual cost thereof, including any expense for labor and materials.
  - (iii) Licensee shall leave the Premises in broom clean condition at the end of each operating season.

- (d) *Fire Safety Standards.* Licensee shall comply with all current and future applicable regulations and requirements and with the standards and best practices of the National Fire Protection Association and the New York Fire Insurance Rating Organization, and of any other agency, board, or organization exercising similar functions, that apply to the Licensee's Use in the Premises.
- (e) *Operating Licenses.* Licensee shall obtain and maintain all necessary licenses, certificates, permits, or other governmental authorization for the Use, and shall provide for the inspection and review of such governmental authorizations by State Parks and other persons authorized by law. Licensee shall comply with all current and future governmental laws, regulations, codes, or orders applicable to the Licensee's conduct of the Use at or its occupancy of the Premises ("**Licensing Requirements**"). If any current or future Licensing Requirement requires a Capital Project, such work is subject to the requirements of Section 23. This provision does not constitute consent by State Parks to the application of any Licensing Requirements to State Parks or the State of New York.
- (f) *Method of Sales Transactions.* Intentionally omitted.
- (g) *Payment of Taxes.* Licensee is solely responsible for and shall pay in a timely manner all applicable taxes.
- (h) *Identifying Signage.* Licensee shall post within the Premises, in a place and manner that is easily visible to the public, signage approved by State Parks that identifies the Premises as operated and maintained by Licensee under a license from State Parks and lists Licensee's corporate name and contact information.
- (i) *Hours of Operation.* Licensee shall conduct the Use only between 7:00am and 9:00pm ("**Normal Business Hours**") every Saturday beginning the first weekend in April and ending the last weekend in October. In coordination with the Park Manager the hours of operation shall be as follows: equipment load-in and staging (7am-10am); Food Market open to patrons (11am-6pm); equipment load-out and clean up (6pm-9pm). If Licensee desires to operate outside Normal Business Hours, it may do so only with the express written permission of State Parks, such permission to be subject to the Park's operating hours and security staffing but not to be unreasonably withheld. If such operation requires State Parks' staff, security, or other support beyond normal Park operations, State Parks may condition its permission on Licensee's reimbursement of such costs.
- (j) *Fireworks.* Licensee shall not undertake or permit any firework displays or performances involving pyrotechnics of any kind without the specific prior written approval of State Parks and a permit from the New York State Office of Fire Prevention and Control.
- (k) *Deliveries.* Licensee shall schedule and coordinate deliveries to the Premises by commercial vehicle with the Park's manager so as to not conflict with Park operations. State Parks' Park manager may designate specific routes or ways for the delivery and removal of supplies and equipment by commercial vehicle.
- (l) *Closures.* Although State Parks shall make commercially reasonable efforts to avoid interference with Licensee's use of the Premises, State Parks may, with two weeks' notice to Licensee, require Licensee to temporarily close in order for State Parks to make repairs, alternations, changes, or improvements to the Premises or the Park. Licensee acknowledges that State Parks might close the Park, or a portion of the Park encompassing the Premises, with little or no advance notice for the protection of public

health and safety, and that in such event Licensee shall close until the Park or affected portion of the Park are re-opened and State Parks will have no liability to Licensee for such closures.

- (m) *Prohibition on Vape, Nicotine, and Tobacco Products.* Licensee shall not sell any vape, nicotine, or tobacco products, or faux-tobacco products (e.g., candy cigarettes, bubble gum cigars) at the Premises.
- (n) *Restriction on Vending.* Licensee shall not operate a vending facility or vending machine, as those terms are defined in Section 8714-a of the Unconsolidated Laws, without the prior written approval of State Parks in consultation with the New York State Commission for the Blind. Licensee acknowledges that all vending machine income, as that term is defined in Section 8714-a of the Unconsolidated Laws, obtained from the operation of vending machines at the Premises must accrue to the New York State Commission for the Blind.
- (o) *Information Security.* Licensee shall comply with the provisions of the New York State Information Security Breach and Notification Act, General Business Law Section 899-aa. Licensee shall be liable for the costs associated with such breach if caused by Licensee's negligent or willful acts or omissions, or the negligent or willful acts or omissions of Licensee's agents, officers, employees or subcontractors.
- (p) *Park Regulations.* Licensee shall comply with all applicable State Parks regulations and Park rules, except that if with respect to Licensee's use of the Premises such regulations and rules conflict with the provisions of this agreement, the provisions of this License will prevail.
- (q) *Exterior Signage.* State Parks has adopted a uniform style of signage for the Park and may erect, display, or change signage at the exterior of the Premises in its sole discretion. Licensee shall not erect, display, or change any advertising, identifiers, or other signs at or on the exterior of the Premises or elsewhere in the Park without the prior written consent of State Parks.
- (r) *Operation of Motor Vehicles and Heavy Equipment.* Licensee shall not allow the operation of a motor vehicle by anyone under the minimum age required by law or who does not hold a valid license for such operation. Licensee shall not permit the operation of heavy equipment, including trailers, by anyone other than a motor vehicle operator who is properly trained in the safe use and handling and the limitations of the equipment. Licensee shall not operate motor vehicles on any public use pedestrian/bicycle paths without written approval from State Parks.
- (s) *Security.* Licensee shall be responsible for providing all necessary security measures to protect patrons, guests, employees, and all other individuals from any disturbance or other occurrence attributable to Licensee's operation of the Premises, including without limitation the use of armored car or courier service for the collection and movement of cash from registers or points of sale.
- (t) *Automated External Defibrillators.* State Parks shall provide and maintain one automated external defibrillator at locations within the Premises of its choosing. Licensee may, along with any other person, use the automated external defibrillator and Licensee may, in consultation with State Parks as to the location, provide and maintain additional automated external defibrillators at the Premises.

**Section 8. Special Operating Requirements**

- (a) *Vendors; Menus; Pricing.* Licensee acknowledges that its selection of vendors including their food and beverage pricing and menus are subject to review and approval by State Parks. Licensee shall submit an initial list of Open Food Market Vendors to State Parks for approval prior to beginning the Use. State Parks' approval of pricing continues unless and until such approval is expressly revoked upon reasonable written notice to Licensee. State Parks may require Licensee's vendor pricing be consistent with other food vendors in the general area.
- (b) *Alcohol Service and Sales.* Licensee may sell alcoholic beverages at the Premises within an area designated by State Parks if it obtains and holds the applicable New York State Liquor Authority license. Licensee must comply with the terms of its liquor license in all serving or sale of alcoholic beverages. Licensee shall obtain the prior approval of State Parks for all alcohol-related signs, media messaging, advertisements, and sales promotions.
- (c) *Event Staging and Management.* Licensee is responsible for the set-up, operation, management, clean-up and all other aspects of the Use. Licensee is authorized to set up tables, booths, storage units, and related property in a designated location in accordance with a schedule, site plan, and certificate of occupancy as approved by State Parks. Such property and equipment shall be used solely for purposes contemplated by the Use. The Licensed Premises is to be completely vacated at the conclusion of each permitted event.
- (i) All staging and set up of equipment and/or improvements, renovation, or disturbance of existing conditions at the Licensed Premises to be undertaken by Licensee are subject to the prior review and written approval of State Parks, and shall be completed in accordance with all State codes, rules, and regulations, including, when applicable, historic preservation review and the State Environmental Quality Review Act (SEQR).
- (d) *Booking of Events.* Licensee shall coordinate with State Parks with respect to scheduling events permitted in this License including any additional events as approved by State Parks. If any events are to be held on a portion of Platform "A" Licensee is required to obtain State Parks prior approval. State Parks shall have use of Platform A for annual Park events that occur simultaneously with the Open Food Market Concession and shall be coordinated in advance between State Parks and Licensee.
- (i) The maximum capacity of the Park for any Event shall not exceed 2,000 people at one time per platform, which limit shall be strictly enforced by Licensee.
- (ii) All Events shall comply with the ordinances and regulations of the City of New York that relate to the amplification of sound in outdoor venues.
- (iii) Licensee shall be solely responsible to acquire and possess all performing, musical, and other legal rights from any authors and/or owners of all presentations, necessary to present said performances at the Permitted Premises, including payment of any and all royalties to ASCAP, BMI, or any other such entity.
- (e) *Security.* Licensee shall provide sufficient security within the Licensed Premises to satisfy all security requirements. At least thirty (30) days prior to the commencement of the first Event, Licensee shall

submit for State Parks' review and approval a written operations plan for event-related staffing, security, crowd control, and traffic control in the vicinity of the Park.

- (i) All equipment owned by Licensee or loaned or leased to Licensee by third parties and placed on the Licensed Premises shall be the sole responsibility of Licensee. Licensee shall make provision for the security of its equipment, including the assignment of necessary staff to safeguard such equipment.
  - (ii) Licensee shall provide necessary security for the Licensed Premises for all events pursuant to a security plan to be developed jointly by Licensee and State Parks. The security plan shall provide details for security staff levels for all areas of the Licensed Premises for each event. The New York State Park Police ("Park Police") shall have the right to make final the determination of the adequacy of the security plan. Licensee shall adhere to the determination of the Park Police and Licensee's security personnel shall be subordinate to the authority of the police officer in charge assigned by the Park Police.
- (f) *Emergency Response.* Licensee shall establish, adhere to, and train its employees on an emergency action plan to address possible emergency situations associated with the Use (an "EAP"). Licensee shall submit its EAP to State Parks for review and approval within 30 days after the Commencement Date and shall submit any proposed changes to the EAP to State Parks for approval prior to implementing such change. Licensee's EAP must meet the following minimum requirements.
- (i) The EAP must include the contact information for each employee of Licensee charged with implementing the EAP, as well as the contact information for Park management and local emergency services.
  - (ii) The EAP must include incident reporting requirements consistent with State Parks' Emergency Notification Protocol and document all accidents and injuries on State Parks' incident reporting form.
- (g) *Sanitary Stations.* Licensee shall be responsible for providing adequate portable sanitary stations and related services within or close proximity to the License Premises as approved by State Parks. Licensee agrees to make sanitary stations available for other events within the park with State Parks or other event absorbing the cost of sanitary service outside the scope of Licensee's Use.
- (h) *Storage and Containers.* Licensee is permitted to store a container on Platform B in a location designated by State Parks. If stored during the off season from November 1<sup>st</sup> - March 31<sup>st</sup>, Licensee shall pay State Parks \$2,000 by the 10<sup>th</sup> day of each month. The container shall be situated on Platform B at an area designed by Parks and the container shall be disconnected from its power source prior to off season storage.
- (i) *Parking.* There are no facilities to accommodate vehicle parking at the Park. Licensee shall be responsible for procuring any necessary parking facilities from third parties.
- (j) *Third Party & Concessions.* Prior to signature by Licensee, Licensee shall provide State Parks with a copy and reasonable opportunity to review any proposed Permit to engage a third party ("sub-Licensee") to operate a concession for the sale of food, beverages, merchandise or other services. Review by State Parks shall be conducted in a timely manner and promptly raise any issues or

concerns. Licensee shall require its contractors and concessionaires to assume responsibility for the proper care and maintenance of any and all concession equipment that has made available to Licensee hereunder.

### **Section 9. Maintenance and Repairs**

- (a) Licensee shall maintain the Premises in in safe, operable, and inviting condition at all times and keep the Premises in good and acceptable repair as determined by State Parks. Except as otherwise specifically set forth in this agreement, Licensee shall perform all capital and routine repairs, replacements, and maintenance as needed on a turnkey basis at its own cost, including such work that is required as a result of vandalism or other destructive acts.
- (b) Licensee shall at its sole cost repair, replace, rebuild, or repaint, as necessary, any part of the Premises or of the Park that is damaged or destroyed by the acts or omissions of Licensee, its customers, or other persons who are at the Premises at Licensee's invitation. Licensee shall notify State Parks within three business days of any damage to or destruction of the Premises. If such work constitutes a Capital Project, such work is subject to the requirements of Section 23.
- (c) Licensee shall maintain and keep the State Equipment in good and acceptable condition. Licensee shall be responsible for the repair of and, if necessary, the replacement in kind of any of the State Equipment at its sole expense during the term of this agreement.
- (d) Licensee shall maintain proper maintenance and repair records and make such records available to State Parks upon request.

### **Section 10. Advertising**

- (a) Licensee shall use commercially reasonable efforts to promote its Use.
- (b) State Parks reserves the right to require Licensee to use a standard design, style, template, or format in all advertisements and other promotional materials, including website design and social media. State Parks may prohibit any advertising sign by Licensee that, in the sole judgement of State Parks, impairs the aesthetics of the Park or that restricts the movement of patrons in the area.
- (c) Licensee shall not advertise or offer for sale, hire, or use any Park amenities, areas, or activities outside of the Premises without the prior approval of State Parks.

### **Section 11. Qualified Staff**

- (a) Licensee shall employ all necessary staff in sufficient force to conduct the Use properly, efficiently, and to the high standards for operation required by this agreement. Licensee shall employ only duly qualified and competent staff, including professional and experienced managers to oversee and administer the operation of the Premises. At least one person specifically designated as a supervisory manager must be on duty when the Premises is open for business.
- (b) Licensee's employees and contractors must be able to communicate effectively with State Parks' officials, the public, vendors, public safety personnel, and all others with whom they must interact in the course of their employment.

- (c) Licensee is solely responsible for the recruitment and screening of personnel and verification of credentials.
  - (i) Licensee shall check each prospective personnel against United States Department of Justice's national sex offender registry.
  - (ii) Licensee shall not hire or retain any person in connection with the Use who:
    - (a) refuses to provide the names of references, documentation of credentials, information on criminal conviction records, or any other requested information that bears on the applicant's fitness to work with or in close proximity to the public, including children; or
    - (b) has not completely and truthfully reported information concerning their criminal convictions; or
    - (c) subject to and consistent with Article 23-A of the New York State Correction Law, has a criminal convictions record that directly bears on their fitness to work with or in close proximity to the public, including children, or whose employment would involve an unreasonable risk to the safety or welfare of the public, including children; or
    - (d) has been the subject of or is currently the subject of an ongoing investigation pursuant to, an indicated child abuse and maltreatment report on file with the Statewide Central Register of Child Abuse and Maltreatment.
- (d) Licensee shall train its employees in appropriate operational procedures and standards, including, as applicable and without limitation, pricing definitions; item specifications; first aid, CPR and use of automated external defibrillators; housekeeping and maintenance standards; courtesy, guest relations, and speed and manner of customer service; personal appearance; safety; and individual job performance. Licensee shall additionally train its managerial employees in quality and cost controls; marketing and advertising; supervision; and accounting and cash control procedures.
- (e) Licensee shall arrange for all employees involved in the preparation and serving of food to be certified through the ServSafe® program offered by the National Restaurant Association or an equivalent industry standard approved by State Parks. Line staff must be certified through a food handler module, and management-level employees must be certified through a manager training module. Licensee shall provide such certifications to State Parks upon request. Licensee shall arrange for all employees serving alcohol to receive industry-standard alcohol service training.
- (f) Licensee shall provide its employees with identification credentials and distinctive attire or uniforms that foster a neat and appropriate public image. The style of uniforms is subject to approval by State Parks.
- (g) Licensee shall take prompt and appropriate action in response to complaints about the conduct, demeanor, or appearance of its employees, contractors, customers, and other business invitees. Upon the request of State Parks, Licensee shall immediately take all reasonable steps necessary to remove or otherwise resolve the cause of such complaints, including to discipline, retrain, or replace any employee whose conduct or appearance is unprofessional or inconsistent with the standards of State Parks. To the extent commercially reasonable, any collective bargaining agreement between Licensee and any labor union or organization must recognize the foregoing right of State Parks, and no such collective bargaining agreement shall in any way affect or diminish the rights of State Parks hereunder.



**Section 12. Licensee Responsibilities**

- (a) Licensee shall comply with all federal and state laws, codes, regulations, and policy or guidance documents applicable to the conduct of the activities authorized by this agreement, including all applicable governmental regulations regarding the sale, use, and storage of foodstuffs, beverages, alcohol, and fuel.
- (b) During the term of the agreement Licensee shall maintain policies on sexual harassment prevention, workplace violence prevention, and non-discrimination and shall train its employees on such policies.
- (c) Licensee shall, to the same extent required of State Parks' own operations, comply with all State of New York and State Parks policies implemented to address the environmental impacts of its operations, including, without limitation, those on the use of non-biodegradable materials, the purchase of "green" products, and the conservation of energy. Consistent with such policies, at a minimum Licensee:
  - (i) shall use recyclable materials whenever practicable;
  - (ii) shall provide appropriate receptacles to allow for separation of recycling material and biodegradable waste from other trash and debris; and
  - (iii) shall not provide or distribute Styrofoam products or single-use plastic bags, condiment packets, drinking straws or drink stirrers, except that Licensee shall provide plastic drinking straws upon request to customers with a physical or medical need therefor.
- (d) Licensee shall make reasonable efforts to purchase goods and services from New York State businesses and suppliers sourcing products from New York State businesses, including minority- and women-owned businesses certified by Empire State Development, and service-disabled veteran owned businesses certified by the Office of General Services ("**New York Vendors**"). Licensee shall make reasonable efforts to participate in the New York State Department of Agriculture and Markets' TasteNY program.
- (e) Licensee shall not commit any nuisance on the Premises or do or allow to be done anything which may result in the creation or commission of a nuisance on the Premises. Licensee shall not cause or produce, nor allow to be caused or produced, any unusual, noxious, or objectionable smoke, gas, vapor, odor, or noise on the Premises, nor allow the same to permeate the Premises or emanate therefrom.
- (f) Licensee shall not use or connect any equipment or engage in any activity or operation that will cause or tend to cause an overloading of the capacity of any existing or future utility, mechanical, electrical, communication, or other system or portion thereof serving the Premises; nor shall Licensee do or allow to be done anything that might interfere with the effectiveness or accessibility of existing and future utility, mechanical, electrical, communication, or other systems or portions thereof on the Premises or elsewhere at the Park. Licensee shall connect all electrical appliances directly to an electrical outlet or fused power strip.
- (g) Licensee shall not overload any floor, roadway, passageway, pavement or other surface, or any wall, partition, column, or other supporting member, or any elevator or other conveyance within the Premises or at the Park.

- (h) Licensee shall not discharge any acids, vapors, or other harmful materials into the water lines, vents, or flues of the Premises. Licensee shall not use the water and wash closets and other plumbing fixtures for any purpose other than those for which the same were designed and constructed, and shall not throw or deposit any sweepings, rubbish, rags, acids, or other foreign substances therein. Licensee shall not store, sweep, or throw anything into the shared common or public areas of the Park, or into or upon any heat or ventilating vents or registers in the Premises, or into any plumbing apparatus in the Premises, or onto any buildings or land adjoining the Premises.
- (i) Licensee shall not use or store, or allow the use or storage, at the Premises of any explosives of any kind, illuminating oils, oil lamps, turpentine, benzene, naphtha, or other similar hazardous materials or substances. Licensee shall properly handle, store, and use all fuel, including propane tanks, Sterno, or other portable warming fuel and apparatus.
- (j) Licensee shall not place objects against glass partitions, doors or windows, ceilings or floors, or walls in a manner that is unsightly from any exterior within the Premises and shall promptly remove the same upon notice from State Parks. Licensee shall not install or place, or permit to be installed or placed, any lights, fixtures, or decorations of any sort or any flashing, blinking, neon, or animated signs or lights in windows or areas visible to public view.

### **Section 13. Sponsorships**

Licensee shall not sell, lease, license, market, or otherwise offer sponsorship opportunities to the Premises or the Use without the express written permission of State Parks. Sponsorship includes, without limitation, naming rights, recognition of contributors and donors of money, property, services, or anything of value to Licensee. Sponsorship of the Premises or the Use is subject to the approval of State Parks as to form, content, and manner of presentation, and Licensee shall not enter into any sponsorship agreement without the prior written approval of State Parks. Sponsorship by companies, interests, or organizations that are directly identified with the sale or use of vape, nicotine, or tobacco products is strictly prohibited. Sponsorship opportunities include, without limitation, program inserts, product sampling, and advertising displays at the Premises.

### **Section 14. Special Events**

- (a) Licensee may, by written permit issued in advance by State Parks' NYC Regional Office, conduct the Use outside the Premises (a "**Special Event**"). State Parks may condition or deny approval for Special Events on the basis of impacts to the Park; impacts to public access, use, and enjoyment of the Park; and on additional costs to the Park imposed by the Special Event. Licensee shall use best efforts to make all Special Event requests at least three weeks prior to the proposed date.
- (b) Licensee acknowledges that it is solely responsible for payment of any State Parks' staffing and security costs beyond normal Park operations associated with a Special Event.

### **Section 15. Utility Service; Trash and Debris**

- (a) For all utility services necessary for the Use Licensee shall establish all necessary accounts with utility providers at its own cost.

- (b) State Parks may, upon 24 hours' notice to Licensee or in the event of an emergency no advance notice, temporarily disrupt or disconnect any water, electricity, sewer, ventilation, or other utility infrastructure serving the Premises in order to make necessary or desirable repairs, alterations, or improvements to Premises or the Park. In such event, Licensee shall provide, at its own expense, its own sources of temporary power or other utilities as may be necessary for the Use.
- (c) State Parks is not required to install any water supply, sewer, or drain pipes or fixtures or electric, fuel oil, or gas lines or fixtures at the Premises beyond those already in place on the date of this agreement. If the installation, upgrade, or maintenance of any utility infrastructure within the Premises is necessary, Licensee shall undertake such work at its own cost. Such work constitutes a Capital Project and it must be completed in accordance with Section 23.
- (d) Licensee shall provide for trash removal and recycling service at the Premises at its own cost. Licensee must provide an adequate number of waste receptacles in and around the vicinity of the Park. Licensee is solely responsible for all other necessary grease or specialty waste services and disposal including proper disposal of charcoal, and for all other utility services at the Licensed Premises.

#### **Section 16. Inspection**

- (a) *General Inspection.* Licensee shall coordinate and obtain all state, federal, and local authority inspections necessary for legal operation and code compliance of the Premises, including but not limited to food service, and fire suppression systems. Licensee shall notify State Parks of such inspections in advance and submit the results of all inspections to State Parks upon completion.
- (b) *Fire Prevention Inspection.* Upon request by State Parks Licensee shall arrange with the local fire department for periodic fire prevention inspections.
- (c) *State Inspection.* State Parks may, upon 24 hours' notice and during Normal Business Hours, enter the Premises to making an inspection. If, as a result of such inspection, it is the determination of State Parks that any deficiencies exist in the condition of the Premises, State Parks shall inform Licensee of said deficiencies in writing and Licensee shall correct said deficiencies within ten calendar days of such notice, after which period State Parks may conduct a follow-up inspection and correct any outstanding deficiencies itself at Licensee's expense. For any deficiencies corrected by State Parks, State Parks shall invoice Licensee for the actual cost thereof, including any labor and materials used.

#### **Section 17. Financial Records**

- (a) Licensee shall keep books and records of account for its Use at the Premises ("**Financial Records**") in an electronic format and in accordance with generally accepted accounting principles. Licensee shall keep its Financial Records for the balance of the calendar year in which they were made and for six additional years thereafter.
  - (i) During the term of this agreement and for six years thereafter, State Parks, the Office of the State Comptroller, the Office of the Attorney General, and their authorized representatives and contractors (collectively, "**State Auditors**") may inspect and audit Licensee's Financial Records during at any time during Normal Business Hours upon at least 24 hours' notice. As part of such an inspection or audit, the inspector or auditor may make copies of Licensee's Financial Records.

- (b) Licensee shall immediately and properly record all sales of any nature within the Premises using a point of sale system approved by State Parks that has industry standard features or controls to prevent or limit theft and fraud to the fullest extent practicable. Licensee shall record sales from remote, portable, or mobile operations transacted outside the Premises as soon as commercially reasonable and shall use only a process pre-approved by State Parks for such sales.
  - (i) If Licensee uses cash registers, Licensee shall take consecutive daily readings from each cash register in each sales and tax category, post the same to a daily sales report for each register location; and provide such daily sales reports to State Parks on a weekly basis. Licensee shall not reset cumulative cash register readings and shall turn over all keys for cash register reset purposes to State Parks.
  - (ii) If Licensee uses an automated point of sale system, Licensee shall provide full and complete transaction reports to State Parks on a schedule set by State Parks.
  - (iii) If a point of sale system, requires repair or service off the Premises, Licensee shall record and State Parks shall verify all transactions, readings, and data reports before the system or any part thereof is removed and upon its return to service at the Premises.
  - (iv) If readings or data reports are not recorded or stored on a point of sale system, or if the system is cloud-based, Licensee shall undertake all commercially reasonable efforts to comply with the requirements of this section.
  - (v) State Auditors may audit point of sale transactions at any time and Licensee shall provide State Auditors access to all such systems for audit purposes.

## **Section 18. Reporting**

- (a) *Monthly Reporting.* During the term of this agreement and for one month thereafter, Licensee shall on the 15<sup>th</sup> day of each month provide State Parks a report of the following information:
  - (i) Monthly, for the month immediately preceding the report date, and cumulative account of Gross Receipts, showing revenue activity in all categories of sales;
- (b) *Annual Reporting.* During the term of this agreement and for one year thereafter, Licensee shall on or before April 15<sup>th</sup> of each year provide State Parks with:
  - (i) a certified financial statement in a format approved by State Parks covering Licensee's Use for the preceding calendar year; and
  - (ii) a list of Licensee's New York Vendors, the type of goods and services purchased therefrom, and the approximate dollar value of purchases from each New York Vendor for the preceding calendar year; and
- (c) At State Parks request, Licensee shall provide its state and federal income tax filings for any preceding calendar years falling within the term of this agreement.

**Section 19. Liability Insurance**

- (a) On or before the Commencement Date, Licensee shall procure liability insurance coverage that complies with the policy requirements, coverage types, and liability limit minimums set forth in Attachment E (the “**Required Insurance**”). Licensee shall name “the State of New York; its Office of Parks, Recreation and Historic Preservation; and their officers, employees, and agents” as additional insureds.
- (i) State Parks reserves the right to modify the Required Insurance if the scope of Licensee’s operations under this agreement significantly changes or in connection with a Capital Project presenting additional risks.
- (b) On or before the Commencement Date, Licensee shall provide State Parks with evidence it holds the Required Insurance in the form of a certificate of insurance or other written confirmation of insurance coverage, including declarations of insurance and endorsements. Such evidence must, at minimum:
- (i) reference the agreement number;
- (ii) be issued to “New York State Office of Parks, Recreation and Historic Preservation, 625 Broadway, Albany, New York, 12238”;
- (iii) be completely filled out with the date of issuance, name(s) of the insured, carrier, carrier’s National Association of Insurance Commissioners number, policy number(s), coverage period, any deductible or self-insured retention amounts, each occurrence and aggregate limits, and exclusions or additional insured endorsements to the policy;
- (iv) be signed by an authorized representative of the referenced insurance carriers; and
- (v) be either an original copy or an electronic version of the same that can be directly traced back to the insurer, agent, or broker via email distribution or similar means.
- (c) During the term of this agreement, Licensee shall maintain in force the Required Insurance. At least 30 days before the expiration of any policy of Required Insurance, Licensee shall provide State Parks with evidence of the renewal or replacement of such policy; such evidence must meet the requirements of subsection (b) of this section.
- (d) If at any time during the term of this agreement Licensee does not hold the Required Insurance, State Parks may prohibit Licensee from using and occupying the Premises until Licensee holds the Required Insurance and provides acceptable evidence of insurance.
- (e) Licensee shall notify State Parks of any potential claims under the policies of Required Insurance as soon as practicable, but in no event more than three days from Licensee’s receipt of notice of the accident or claim.
- (f) Licensee shall require any of its contractors retained in relation to this agreement to hold the commercial general liability insurance covering claims arising out of such contractor’s ongoing and completed operations at the Premises with a minimum liability limit of \$2,000,000 per occurrence / \$4,000,000 aggregate and comprehensive business automobile liability insurance covering liability arising out of any automobile used by such contractor at the Premises, if any, with a minimum liability limit of \$1,000,000. Prior to any such contractor beginning work at the Premises, Licensee shall obtain evidence that such contractor holds the insurance required by this subsection and make such evidence available to State Parks upon request.

**Section 20. Workers' Compensation and Disability Benefits Insurance Coverage**

Licensee acknowledges that pursuant to Workers' Compensation Law Section 57 and 220(8), State Parks cannot enter into this agreement without receiving proof of Licensee's compliance with or exemption from the coverage requirements of the Workers' Compensation Law. Unless otherwise determined by the Workers' Compensation Board, the following forms are the only acceptable means of proof of compliance: for workers' compensation, the C-105.2, U-26.3, or SI-12; for disability benefits, the DB-120.1 or DB-155.

**Section 21. Indemnity and Claims**

- (a) Licensee assumes all risks in its performance under this agreement and agrees to defend, indemnify, and hold harmless the State of New York, State Parks, and their officers, employees, agents, and assigns ("the **Indemnitees**") from and against all claims, suits, losses, damage, or injury to persons or property of whatsoever kind and nature, whether direct or indirect, that are caused or contributed to by Licensee or Licensee's contractors, vendors, employees, agents, and invitees and that arise out of Licensee's conduct or Licensee's performance of this agreement; provided, however, that Licensee's indemnity will not extend to any claims, suits, losses, damage, or injury to persons or property directly caused by and but for the negligence of any Indemnitee.
- (b) For all purposes hereunder, State Parks will not be liable for any injury, loss, or damage to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any person happening on, in, or about the Park or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Licensee or to any other person, that may be caused by fire, theft, breakage, vandalism, or any other use or misuse or abuse of any portion of the Park, including but not limited to any common areas, sidewalks, roads, or water in or adjacent to the Park, or that might arise from any other cause whatsoever, unless and only to the extent of the proportion of which any such injury, loss or damage is determined to be directly caused by and but for the negligence of State Parks.
- (c) For all purposes hereunder, State Parks will not be liable to Licensee or to Licensee's contractors, vendors, employees, agents, and invitees or to any other person for any failure of water supply, gas supply, or electric current, nor for any injury or damage to any property of Licensee or any other person or to the Premises caused by or resulting from spill or release of gasoline, oil, steam, gas, or electricity; leakage of any substance from pipes, appliances, sewers, or plumbing works; hurricane, flood, tornado, wind, or similar storm or disturbance; water, rain, or snow that might leak or flow from the street, sewers, or subsurface areas, or from any part of Park or any body of water within or adjacent to the Premises; or any public or quasi-public work, unless and only to the extent of the proportion by which any such injury, loss, or damage is determined to be directly caused by and but for the negligence of State Parks.

**Section 22. Intellectual Property**

Except for the descriptive use of facility names in its advertising and any rights specifically granted in this section, Licensee shall not use any State Parks or State of New York trademarks, service marks, logos, and other brand identification and indicia ("**State Marks**"). Licensee acknowledges that it does not acquire any right, title, or interest in or to any State Marks by virtue of this agreement, and Licensee hereby disclaims any other such right, title, or interest. Licensee shall not register or apply to register any State

Marks or any related word and/or design marks that may be developed and used by State Parks in the future (“**Related Marks**”) or any other terms or designs confusingly similar thereto with the United States Patent and Trademark Office, the State of New York, or any other jurisdiction administering a register of trade and/or service marks. Any rights asserted by Licensee in any State Marks will vest in the State of New York and any goodwill from the use of the State Marks by Licensee will inure solely to the benefit of State Parks.

### **Section 23. Capital Projects**

- (a) Licensee shall not erect any structures; make any modifications, alterations, additions, improvements, repairs, or replacements; or do any construction work on, to, or affecting the Premises or the Park, or install any non-removeable fixtures in or on the Premises (a “**Capital Project**”) without the prior written consent of State Parks. Licensee shall remove or modify any Capital Project undertaken without State Parks’ consent if State Parks so directs. No review or approval of any Capital Project is made by the virtue of the granting of this agreement. State Parks reserves the right to condition the approval of any Capital Project that would materially increase the capacity or expand the traditional operating season of the Licensed Premises upon financial terms that directly address any new cost to State Parks associated therewith.
- (b) Any Capital Project undertaken by Licensee must be in accordance with the provisions of Attachment C and comport with the master plan for the Park, if one has been adopted.
- (c) Capital Projects undertaken by Licensee, whether with or without the consent of State Parks, will become the property of State Parks upon completion unless the consent of the State Parks expressly provides otherwise. Licensee shall not remove or modify any Capital Project during the term of this agreement or at its expiration or termination without the prior written consent of State Parks.
- (d) In addition to requiring insurance coverage under Section 19 and Attachment C, Licensee shall require all its Capital Project consultants and contractors to indemnify the Indemnitees as set forth in Section 21.
- (e) All of Licensee’s consulting, construction, or other contracts for a Capital Project must be in accordance with the terms of this agreement and must not impair the rights of the State of New York or of State Parks under this agreement or create or be deemed to create a contractual or third-party beneficiary relationship between State Parks and any contractor of Licensee.
- (f) If a code compliance certificate for the Premises has been issued by State Parks, nothing in this section is intended to prohibit Licensee from operating prior to or during the completion of a Capital Project.

### **Section 24. Liens**

- (a) Licensee shall not create or cause to be created any lien, encumbrance, or charge upon the Premises, the Park, or any part thereof.
- (b) If any mechanics, laborers, or similar statutory or common law lien (including tax liens, provided that the underlying tax is an obligation of Licensee by law or by a provision of this agreement) caused or created by Licensee is filed against the Premises, or if any public improvement lien created or caused to be created by Licensee is filed against any assets of or funds appropriated by State Parks, then

Licensee shall within 45 days after receipt of notice of the lien cause it to be vacated or discharged of record by payment, deposit, bond, court order, or otherwise.

- (i) Licensee will not, however, be required to discharge any such lien if Licensee has: (i) furnished State Parks with, at Licensee’s option, a cash deposit, bond, letter of credit (from an institutional lender in a form satisfactory to State Parks), or other security reasonably satisfactory to State Parks in an amount sufficient to discharge the lien and all applicable interest, penalties, and/or costs; and (ii) brought an appropriate legal proceeding to discharge the lien and is prosecuting such proceeding with diligence and continuity; except that if despite Licensee’s efforts to discharge the lien State Parks reasonably believes the lien is about to be foreclosed and so notifies Licensee, Licensee shall immediately cause such lien to be discharged of record or State Parks may use the security furnished by Licensee in order to discharge the lien.

**Section 25. Coordination with State Parks**

Licensee shall cooperate with State Parks and comply with all reasonable requests made with respect to the operation and maintenance of the Premises. Licensee shall meet with State Parks on a regular basis to review, plan, and improve the development, construction, maintenance, and operation of the Premises.

**Section 26. Designated Contacts; Consents by State Parks**

- (a) The parties hereby designate the following individuals as their designated contacts for day-to-day operations under this agreement.

For State Parks: Andrew Bogardt, Park Manager Email: <a href="mailto:Andrew.Bogardt@parks.ny.gov">Andrew.Bogardt@parks.ny.gov</a> Telephone: 718-782-2731	For Licensee: [Name], [Title] Email: Telephone:
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- (b) The parties may designate replacement or updated contacts under subsection (a) of this section by giving 15 days written notice to the other party.
- (c) Any consent by State Parks permitted or required under this agreement shall be given by State Parks’ Long Island Regional Office unless the provision permitting or requiring such consent expressly provides otherwise. State Parks shall not unreasonably withhold or delay any consent or approval requested by Licensee.

**Section 27. Notices**

- (a) All notices permitted or required under this agreement shall be in writing and shall be transmitted:
  - (i) via certified or registered United States mail, return receipt requested;
  - (ii) by personal delivery;
  - (iii) by expedited delivery service; or
  - (iv) by e-mail.
- (b) Such notices must be addressed as follows or to such different address as the parties may from time-to-time designate:



If to State Parks:  
 OPRHP – NYC Region  
 163 West 125<sup>th</sup> Street, 17<sup>th</sup> Floor  
 New York, NY 10027  
 Attn: Regional Director  
 Email: [Leslie.Wright@parks.ny.gov](mailto:Leslie.Wright@parks.ny.gov), with a copy  
 to [Richard.Fink@parks.ny.gov](mailto:Richard.Fink@parks.ny.gov)

If to Licensee:  
 [Licensee]  
 [Address]  
 [City, State ZIP]  
 Attn: [Name/Title]  
 Email:

and

NYS OPRHP  
 625 Broadway  
 Albany, NY 12238  
 Attn: Director, Concessions Management Bureau  
 Telephone Number: 518-486-2932  
 Email: [concessions@parks.ny.gov](mailto:concessions@parks.ny.gov), with a copy to  
[counsel@parks.ny.gov](mailto:counsel@parks.ny.gov)

- (c) Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address, or in the case of email, upon receipt.

**Section 28. Sublicensing**

- (a) Licensee may, with the prior written approval of State Parks and, if required by law, the New York State Office of the State Comptroller, and subject to the terms and conditions of this agreement, sublicense its rights and obligations, including applicable insurance requirements, under this agreement to an independent third-party or subcontract for an independent third party to undertake a portion of the Use on its behalf. Such third-party must meet State Parks’ vendor responsibility requirements and have demonstrable qualifications and experience for the sublicensed obligations.
- (b) Licensee shall require its sublicensees and subcontractors to comply with the provisions of this agreement and shall name the State of New York, through State Parks, as the sole intended third-party beneficiary of the sublicense or subcontract. State Parks reserves the right to review and approve or reject the sublicense or subcontract, as well as any amendments thereto; this right does not make State Parks or the State of New York a party to any sublicense or subcontract or create for the sublicensee or subcontractor any right, claim, or interest in the sublicense against State Parks.
- (c) If Licensee sublicenses or subcontracts as provided for in this section, State Parks may in its sole discretion require additional financial security from the Licensee or the sublicensee or the subcontractor.
- (d) Licensee shall give State Parks immediate written notice of the initiation of any legal action or claim arising out of a sublicense or subcontract that may affect Licensee’s performance under this Agreement.

- (e) No sublicense or subcontract will relieve Licensee of any duty, obligation, or responsibility owed to State Parks under this agreement.

### **Section 29. Surrender**

- (a) Licensee shall yield and deliver peaceably to State Parks possession of the Premises on the date of expiration or termination of this agreement. Licensee shall return the Premises to State Parks in broom clean condition, reasonable wear excepted as would not adversely affect or interfere with the efficient and proper utilization of the Premises or any part thereof, or in compliance with an alternative agreement reached by the parties at the time of surrender.
- (b) On or before the expiration or termination of this agreement, Licensee shall:
  - (i) remove its equipment and other personal property and all property of third parties for which it is responsible from the Premises;
  - (ii) remove any advertising, identifiers, or other of its signs from the interiors and exteriors of the Premises and from any other location within the Park; and
  - (iii) repair all damage caused by such removals.

State Parks may lawfully remove or dispose of any personal property remaining at the Premises after the expiration or termination of this agreement.

- (c) No agreement of or to accept a surrender will be valid unless and until the same is reduced to writing and signed by the duly authorized representatives of the parties. Except as expressly provided in this section, neither the doing of nor any omission to do any act or thing by any of the officers, agents, or employees of State Parks will be deemed an acceptable of a surrender of the Premises or this agreement. Without limiting the foregoing, no officer or employee of State Parks is authorized to accept the keys of the Premises as an act of surrender prior to the expiration or termination of this agreement and no delivery of the keys to State Parks by Licensee will constitute a termination of this agreement or acceptance of surrender.

### **Section 30. Rights of Entry and Re-Entry**

- (a) In addition to any other rights of entry in this agreement, State Parks may, upon 24 hours' notice and during Normal Business Hours, enter the Premises for the purposes of observing the performance by Licensee of its obligations under this agreement or for the doing of any official act or things which State Parks may be obligated or have the right to do under this agreement or in accordance with law. In case of emergency or exigent circumstances threatening the health, safety, or welfare of the public or the physical integrity of the Premises or the Park, State Parks reserves an unrestricted right of entry to the Premises at all times.
- (b) State Parks may upon the expiration or termination of this agreement re-enter the Premises and every part thereof upon the effective date of termination without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter, or diminish any of the obligations of Licensee under this agreement, and shall in no event constitute an acceptance of surrender.

**Section 31. Rights Upon Loss from Casualty**

- (a) If the Premises suffers a loss or damage from casualty, Licensee shall notify State Parks as soon as practicable.
- (b) If the loss or damage from casualty does not substantially interrupt or impede Licensee's Use, Licensee shall proceed with performance of this agreement, including Licensee's affirmative responsibility for all capital repair and replacement of any and all elements of the Licensed Premises. In such event, State Parks and Licensee shall negotiate an equitable abatement of the License Fee to the extent reasonably feasible and proportionate to the extent that Licensee's operations are impeded or interrupted by such loss or damage.
- (c) If the loss or damage from casualty is to the extent that Licensee's Use is substantially interrupted or impeded, State Parks shall consult with Licensee prior to making a determination of whether or in what manner the loss or damage can or should be restored to substantially the same condition as existed prior to such loss from casualty. State Parks shall make a preliminary determination within 24 hours of the Premises being sufficiently safe to access and make its final determination within 45 days of its preliminary determination.
  - (i) If State Parks determines that the loss or damage cannot or should not be restored, State Parks shall inform Licensee of such determination and set a date on which the agreement will terminate. In such event, Licensee shall pay State Parks the unamortized amount of Licensee's Minimum Capital Investment out of its share of any insurance proceeds. For purposes of this paragraph, Licensee's Minimum Capital Investment will be amortized on a straight-line basis over the term of this agreement.
  - (ii) If State Parks determines that the loss or damage can and should be restored, Licensee may, within thirty days of State Parks' determination and by written notice to State Parks, elect to restore the Premises at Licensee's sole cost and expense, in which case this agreement shall continue in force. Licensee may apply the proceeds of its required policy of property insurance to the restoration of the Premises. Any restoration work will be deemed a Capital Project. If Licensee does not wish to undertake its own restoration of the Premises, Licensee shall, within thirty days of State Parks' determination, provide State Parks with written notice of its decision and pay to State Parks the full proceeds it received under its required policy of property insurance and this agreement will terminate upon written confirmation of receipt of such funds by State Parks.
- (d) If this agreement is terminated because of loss or damage from casualty Licensee shall pay to State Parks all fees and other amounts due for the period through and including the date of casualty and the parties shall otherwise finalize all open matters and obligations between them.
- (e) Nothing in this section releases Licensee from its obligation to carry the insurance required by Section 19 and Attachment E.

**Section 32. Force Majeure**

- (a) If either State Parks or Licensee is delayed or prevented from performing any act required by this agreement by reason of acts of God, weather, earth movement, lockout or labor trouble, unforeseeable

restrictive governmental laws or regulation, or acts of war, riot, or other similar causes without fault and beyond the reasonable control of the party obligated, the performance of such act shall be excused for the period of the delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay. Nothing in this section however, excuses Licensee from the prompt payment of any all fees and other financial obligations due and owing to State Parks prior to the act constituting force majeure.

- (b) Licensee waives any and all claims for compensation from the State of New York and State Parks for any and all loss or damage sustained by Licensee resulting from weather, fire, water, tornado, civil commotion, riots, earth movement, or other similar or dissimilar causes beyond the control of State Parks.

### **Section 33. Freedom of Information Law**

Licensee acknowledges that State Parks is subject to the requirements of the Freedom of Information Law and that any information or records submitted by Licensee to State Parks are presumptively subject to disclosure unless specifically exempted by statute. In accordance with Public Officers Law Section 89(5)(a)(3), State Parks will maintain any information or records that Licensee requests be exempted from disclosure pursuant to Public Officers Law 87(2)(d) apart from all other information or records and, in the event of a request under the Freedom of Information Law for such information or records, shall contact Licensee to determine the extent to which such information or records might properly be exempted from disclosure.

### **Section 34. Responsibility Determination by State Parks**

- (a) Licensee acknowledges that State Parks' execution of this agreement is contingent upon the State Parks' determination that Licensee is responsible. State Parks relies in part upon the Licensee's responses to the Vendor Responsibility Questionnaire developed by the Office of the State Comptroller to make its responsibility determination, but may make its determination based on any information available to it.
- (b) Licensee shall remain responsible throughout the term of this agreement. Upon request by State Parks, Licensee shall present evidence of its continuing legal authority to do business in New York State and its business integrity, legal authority, experience, ability, prior performance, and organizational and financial capacity.
- (c) If State Parks discovers information that calls into question Licensee's responsibility, State Parks may suspend any or all activities under this agreement by written notice to Licensee outlining the basis of the suspension and listing activities to be suspended. Upon the issuance of such suspension notice, Licensee shall not engage in or undertake the listed activities unless and until State Parks issues a written notice ending the suspension and Licensee shall comply with all reasonable requests from State Parks to cure the basis for suspension.

### **Section 35. Conflicts of Interest; Former State Employees**

- (a) Consistent with its attestation made in the RFP Response, Licensee states there is no actual or potential conflict of interest that could prevent Licensee's satisfactory and ethical performance of its obligations

under this agreement. Licensee shall notify immediately State Parks of any actual or potential conflict of interest that arises after the signing of this agreement.

- (b) Licensee shall not hire former State Parks employees in violation of the New York Public Officers Law, other laws applicable to the service of State employees, or the rules, regulations, opinions, guidelines, or policies of the New York State Joint Commission on Public Ethics or its predecessors (the “**Ethics Requirements**”). Consistent with its certification made in the RFP Response, Licensee shall not assign any of its employees in violation of the Ethics Requirements or allow any of its employees to provide services in violation of the Ethics Requirements. Licensee shall identify to State Parks all of its employees who are current or former employees of State Parks; State Parks may require Licensee to provide reasonably necessary information to determine whether any such employee’s work is consistent with or violates the Ethics Requirements and may require Licensee to seek the opinion of the New York State Joint Commission on Public Ethics or its successor. Licensee acknowledges that any person who is disqualified from providing services under this agreement by the Ethics Requirements is prohibited from sharing in any net revenues derived by Licensee from the Use.

### **Section 36. Termination**

- (a) If Licensee is in breach of this agreement in any of the following ways and such failure continues for more than or is not commenced to be cured within 30 days from Licensee’s receipt of notice of default issued by State Parks, State Parks may terminate this agreement for cause by notice to Licensee:
- (i) Licensee fails to operate or occupy the Premises;
  - (ii) Licensee’s operation significantly departs from the Use;
  - (iii) Licensee fails to pay the License Fee in accordance with Section 4(a);
  - (iv) Licensee fails to hold the security required under Section 4(b);
  - (v) Licensee fails to pay for utility services in accordance with Section 15 resulting in termination or shut-off of utility service to the Premises;
  - (vi) Licensee fails to file the monthly reports due under Section 18(a);
  - (vii) Licensee fails to hold the Required Insurance in accordance with Section 19;
  - (viii) Licensee attempts to assign or sublicense its rights and obligation under this agreement in contravention of either Section 28 or Paragraph 2 of Appendix A.
- (b) If State Parks or the State of New York determines that Licensee is not a responsible vendor as required under Section 34, that a conflict of interest exists that could prevent Licensee’s satisfactory and ethical performance of its obligations under this agreement, or that Licensee or any of its employees has violated any of the Ethics Requirements, State Parks may terminate this agreement for cause upon notice to Licensee after providing Licensee notice of the basis for the determination and 15 days to challenge the determination.
- (c) If any one or more of the following events occurs, State Parks may, upon the occurrence of such event or at any time thereafter, terminate this agreement by giving Licensee at least 10 days’ notice:
- (i) Licensee becomes insolvent; takes the benefits of any present or future insolvency statute; makes a general assignment for the benefit of creditors; files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement, Licensee’s reorganization, or the readjustment of Licensee’s indebtedness under the federal bankruptcy laws or under any other law of statute of

- the United States or any State thereof; or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property;
- (ii) by order or decree of a court, Licensee is adjudged bankrupt or an order is made approving a petition filed by any creditor seeking Licensee's reorganization or the readjustment of Licensee's indebtedness under the federal bankruptcy laws or under any other law of statute of the United States or any State thereof;
  - (iii) a petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Licensee and not dismissed within 45 days after the filing thereof;
  - (iv) the interest or estate of Licensee under this agreement is actually or purportedly let to, transferred to, passed to, or devolved upon, by operation of law or otherwise, any other person, firm, or corporation except upon the express written approval of State Parks;
  - (v) a receiver, trustee, or liquidator takes possess or control of all or substantially all of the property of Licensee by, pursuant to, or under authority of any legislative act, resolution, or rule or any order or decree of any court or governmental board, agency, or officer;
  - (vi) any execution or attachment is issued against Licensee or any of its property whereupon possession of the Premises or any portion thereof is taken by someone other than Licensee and such possession or control continues for a period of 20 days;
  - (vii) any lien is filed against the Premises because of any act of omission of Licensee and not removed or bonded as provided for in this agreement;
  - (viii) Licensee ceases to be duly authorized to conduct business in the State of New York.
- (d) State Parks may also terminate this agreement without advance notice to Licensee if any member, partner, director, or officer of the Licensee is convicted of any of the following offenses: Bribery Involving Public Servants and Related Offenses, as defined in Article 200 of the New York State Penal Law; Corrupting the Government, as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.
- (e) No waiver by State Parks of any default on the part of Licensee in performance of any of the terms, covenants, or conditions hereof to be performed, kept, or observed by Licensee is or will be construed to be a waiver by State Parks of any other or subsequent default in performance of any of the said terms, covenants, and conditions. No acceptance by State Parks of the License Fee or other amounts due under this agreement will be construed to be a waiver by State Parks of any right of the State to terminate this agreement.
- (f) Licensee hereby waives its right to trial by jury in any summary proceeding, ejectment, or other action that may hereafter be instituted by State Parks against Licensee in respect of the Premises or in any action that may be brought by State Parks to recover fees, damages, or other amounts payable under this agreement. Licensee shall not interpose any claims as counterclaims in any summary proceeding or action for non-payment that may be brought by State Parks unless such claims would be deemed waived if not so interposed.
- (g) The rights of termination described in this section are in addition to any other rights of termination provided in this agreement and any rights and remedies that State Parks would have at law consequent upon any breach of this agreement by Licensee. The exercise by State Parks of any right of termination will be without prejudice to any other such rights and remedies.

- (h) Licensee hereby waives all rights of redemption arising if it is evicted or dispossessed for any cause set forth in this agreement or if State Parks obtains or retains possession of the Premises in any lawful manner.

**Section 37. No Third Party Beneficiaries**

There are no third party beneficiaries to this agreement.

**Section 38. Claims**

- (a) Any and all claims against State Parks arising out of this agreement are limited to money damages and will be commenced exclusively in, and subject to the jurisdiction of, the New York State Court of Claims.
- (b) Any and all claims against Licensee for damages brought by State Parks and/or any actions to enforce the terms and conditions of this agreement shall be enforceable in any appropriate court in Albany County, New York, which shall be the exclusive venue.

**Section 39. Agency**

Nothing contained in this agreement constitutes or will be construed to create or constitute a legal or *de facto* partnership or joint venture or an agency relationship between the parties.

**Section 40. Integration Clause**

This agreement shall not be materially amended or otherwise modified except in writing signed by both parties and approved by the Office of the State Comptroller. Except to the extent that documents are incorporated herein by reference, this agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed herein shall be effective to interpret, change, or restrict the express provisions of this agreement. This agreement shall be interpreted without construing any provision in favor of or against either party by reason of the drafting of the provision.

**\*Signature Page Follows\***

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**In witness whereof**, the parties are signing this agreement on the date stated in the introductory clause.

**Licensee**

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

Name:

Title:

Federal EIN:

*Acknowledgement*

STATE OF \_\_\_\_\_ )  
 ) SS:  
 COUNTY OF \_\_\_\_\_ )

On this \_\_ day of \_\_\_\_\_ in the year 20\_\_, before me, the undersigned a notary public in and for said state, personally appeared \_\_\_\_\_, personally known, to me, or proved to me on the basis of satisfactory evidence to be the individual whose name is described within the instrument and acknowledged to me that he/she executed the same in his/her capacity as the \_\_\_\_\_ of \_\_\_\_\_, and that by his/her signature on the instrument, the individual, or the person upon behalf of whom the individual acted, executed the instrument.

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

**State of New York, Office of Parks, Recreation and Historic Preservation**

Recommendation of Regional Director: \_\_\_\_\_  
 Leslie Wright, NYC Region

By: \_\_\_\_\_  
 Melinda Scott, Deputy Commissioner for Finance and Administration

**Office of the Attorney General**

**Office of the State Comptroller**

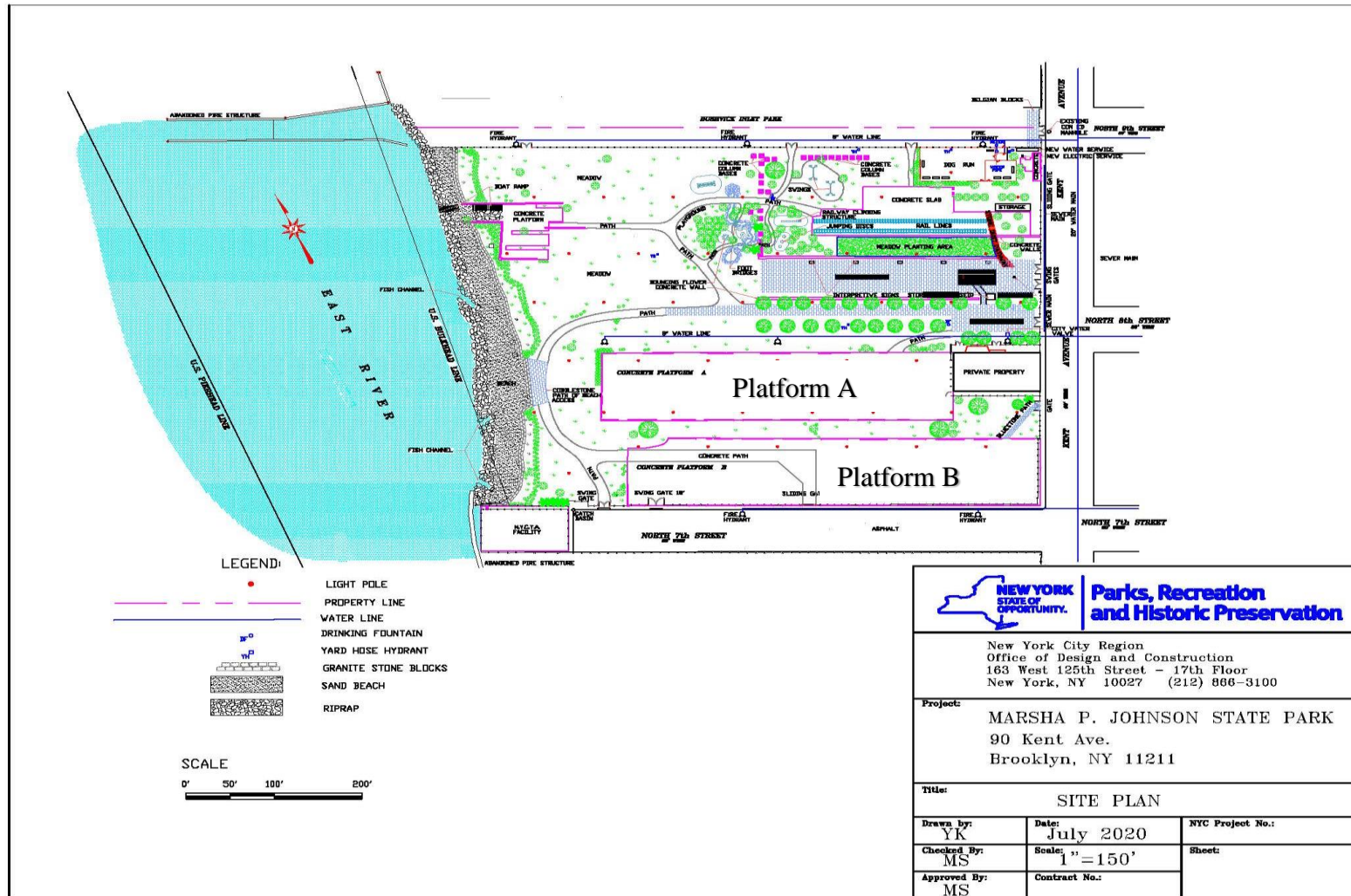
**\*Attachments Follow\***

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Attachment A

**DESCRIPTION OF THE PREMISES**

The Open Food Market concession premises consist of two concrete platforms (A & B) in an open-air setting located at the south end of the Park. Platform A is approximately 397' x 89', or 35,333 square feet. Platform B is approximately 468' x 89', or 41,652 square feet.



## Attachment C

**REQUIREMENTS FOR CAPITAL CONSTRUCTION PROJECTS**

- (a) All capital improvement investment projects to be undertaken by Licensee shall be approved in advance by State Parks in accordance with the License. Upon approval of a capital improvement project by State Parks, the Licensee shall fully implement the approved project and all its individual elements at the direction of State Parks pursuant to the requirements contained herein. The Licensee shall be solely responsible for the full cost of implementing all approved projects, including all costs and expenses of construction that exceed the Licensee's minimum capital investment required by the License.
- (b) Designs for all projects proposed by Licensee shall be in compliance with the NYS Uniform Fire Prevention and Building Code (Building Code). Designs shall be developed and signed by a professional engineer or architect licensed to practice in New York State. All designs for capital improvements shall be subject to the written review and approval of State Parks with respect to aesthetics and compliance with the Building Code, the State Historic Preservation Act, and the State Environmental Quality Review Act, prior to any bidding or award of contracts for such construction, or commencement of construction.
- (c) All contracts for construction or improvement of the Licensed Premises shall provide for the payment of prevailing wage rates set by the New York State Department of Labor. The Licensee is solely responsible to ensure the payment of prevailing wage rates on all capital improvement projects. Upon request by the Licensee, State Parks shall provide prevailing wage rate sheets to the Licensee.
- (d) Copies of all contracts, subcontracts, change orders, progress payment documents and related material shall be provided to State Parks within five business days upon request by State Parks.
- (e) Throughout the construction phase of the project, the Licensee shall conduct regular "job meetings" to assess progress on the project, and produce written records of such meetings, with a copy to State Parks. At the discretion of State Parks, a representative may attend the job meetings at no cost to the Licensee.
- (f) A schedule of construction activity shall be recommended by Licensee and approved by State Parks. Licensee shall not unreasonably interfere with normal park operations. Licensee shall avoid construction on those days when large park attendance can be reasonably anticipated, including major holidays such as Memorial Day, Independence Day (4th of July) and Labor Day.
- (g) All construction and material costs and expenses in excess of original estimates for the approved project shall be the sole responsibility of the Licensee, and State Parks shall have no liability whatsoever for any additional expenses either to the Licensee or the Licensee's contractors, subcontractors, and/or suppliers. The Licensee assumes any and all additional and extra costs, including but not limited to costs and expenses associated with the upgrade of utilities, security and fire control systems, code compliance, delay for whatever cause, weather, and unknown or unforeseen conditions associated with the Licensed Premises. State Parks shall have no obligation in law or in fact to expend funds or undertake any capital improvements as a result or consequence of any project undertaken, or condition encountered by the Licensee.
- (h) **Additional Insurance Required for Capital Improvements.** In addition to the insurance required by the License, the Licensee shall require its contractors to carry Contractor's Liability Insurance which

names State Parks and the Licensee as additional insured. Licensee shall provide to State Parks a copy of all insurance certificates evidencing coverage in compliance with this section. Such insurance shall include the following coverage:

1. Liability (including contractual liability) and Protective Liability to protect the Licensee and State Parks from any suits, actions, damages and costs of every name and description, with respect to all work performed by the Licensee's contractors and subcontractors; and
  2. Owner's Protective Liability to protect State Parks with respect to all operations undertaken by the Licensee's contractors and subcontractors, including omissions and supervisory acts; and
  3. Completed Operations/Products Liability covering liability and damages arising between the date of final cessation of construction work and the date of final acceptance of the construction by State Parks; and
  4. Builder's Risk Insurance:
    - i. Unless otherwise provided for in the License the Licensee's contractor shall maintain builder's risk insurance for the completed value of the Licensed Premises on the All Risk Form.
- (i) Labor and Materials Bond.
1. Prior to the commencement of any construction work hereunder, Licensee shall furnish State Parks with evidence that it has procured a labor and materials payment bond from a corporate surety authorized to transact business in the State of New York, in a form satisfactory to State Parks, naming Licensee as principal, in an amount not less than one hundred (100%) percent of the total cost of the construction work to be undertaken by Licensee as approved by State Parks. Such bond shall guarantee payment for all materials, provisions, supplies, and equipment used in, upon, for, or about the performance of said construction work, and/or labor performed thereon of any kind whatsoever, and which unconditionally protects State Parks from any claims, liability, losses, or damages arising therefrom.
  2. As evidenced by certification by the engineer or architect of record for the project, State Parks shall authorize the reduction of the face value of the labor and materials bond on a monthly or other periodic basis to an amount equal to the remaining contract costs, including approved change orders.
- (j) It is expressly understood that failure of the Licensee to comply with the requirements for capital improvement projects, including maintaining the required insurance and bonds in full force throughout the performance of the approved project, shall be deemed a material breach of the License and may, at the election of State Parks, result in termination of the License without further notice. The Licensee shall notify State Parks immediately of any change in insurance or bonding status including, but not limited to, any change in carrier or surety.

If there are any discrepancies between this Attachment and the License, the language of the License shall prevail.

## Attachment E

**INSURANCE REQUIREMENTS**

The following types of liability insurance coverage with liability limits of at least the levels set forth below are required.

- (a) **Commercial General Liability Insurance** covering claims arising out of ongoing and completed operations under this agreement as well as damage to or loss at the Premises caused by fire and water damage. Such policy must have a liability limit of at least \$2,000,000 each occurrence and at least \$4,000,000 general aggregate.
- (b) **Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance of this agreement including owned, leased, hired, and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Law of the State of New York to bear license plates. Such policy must have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000 each accident.

This coverage is not required if no automobiles or motor vehicles are used in connection with the performance of this agreement.

- (c) **Liquor Liability Insurance** written on ISO form CG 00 33 or equivalent, covering liability arising out of, but limited to, blanket contractual liability, including tort liability, and defense or indemnification obligations, including obligations assumed under this agreement. Such coverage must have a liability limit of at least \$2,000,000 each occurrence.

The required insurance coverage limits may be met through a combination of primary and excess/umbrella liability policies, however, any excess/umbrella policies must be written on a “following form” basis.

All policies of Required Insurance must:

- (i) be written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York and that have an A.M. Best Company rating of “A-”, Class “VII” or better;
- (ii) provide that the required coverage shall be primary and non-contributory to other insurance available to the State of New York; and
- (iii) be written such that State Parks is afforded at least 30 days’ prior notice of cancellation or modification of coverage.

## STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

**1. EXECUTORY CLAUSE.** In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

**2. NON-ASSIGNMENT CLAUSE.** In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

**3. COMPTROLLER'S APPROVAL.** In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds \$50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds \$25,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed \$85,000 (State Finance Law § 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**4. WORKERS' COMPENSATION BENEFITS.** In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

**5. NON-DISCRIMINATION REQUIREMENTS.** To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment, nor subject any individual to harassment, because of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status or because the individual has opposed any practices forbidden under the Human Rights Law or has filed a complaint, testified, or assisted in any proceeding under the Human Rights Law. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

**6. WAGE AND HOURS PROVISIONS.** If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in

accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**7. NON-COLLUSIVE BIDDING CERTIFICATION.** In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

**8. INTERNATIONAL BOYCOTT PROHIBITION.** In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds \$5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR § 105.4).

**9. SET-OFF RIGHTS.** The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

**10. RECORDS.** The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this

contract (hereinafter, collectively, the "Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

**11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.** (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.



**12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN.**

In accordance with Section 312 of the Executive Law and 5 NYCRR Part 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of \$25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of \$100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of \$100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a," "b," and "c" above, in every subcontract over \$25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and

improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this clause. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development's Division of Minority and Women's Business Development pertaining hereto.

**13. CONFLICTING TERMS.** In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

**14. GOVERNING LAW.** This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

**15. LATE PAYMENT.** Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

**16. NO ARBITRATION.** Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**17. SERVICE OF PROCESS.** In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

**18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.** The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of

tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in § 165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

**19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES.** In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

**20. OMNIBUS PROCUREMENT ACT OF 1992.** It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority- and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development  
Division for Small Business  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

A directory of certified minority- and women-owned business enterprises is available from:

NYS Department of Economic Development  
Division of Minority and Women's Business Development  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

The Omnibus Procurement Act of 1992 (Chapter 844 of the Laws of 1992, codified in State Finance Law § 139-i and Public Authorities Law § 2879(3)(n)-(p)) requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than \$1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority- and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

**21. RECIPROCITY AND SANCTIONS PROVISIONS.** Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively, codified in State Finance Law § 165(6) and Public Authorities Law § 2879(5)) require that they be denied contracts which they would otherwise obtain. NOTE: As of October 2019, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii.

**22. COMPLIANCE WITH BREACH NOTIFICATION AND DATA SECURITY LAWS.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law § 899-aa and State Technology Law § 208) and commencing March 21, 2020 shall also comply with General Business Law § 899-bb.

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health,

and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4)(g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law §§ 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law §§ 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.** To the extent this agreement is a contract as defined by Tax Law § 5-a, if the contractor fails to make the certification required by Tax Law § 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law § 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law § 165-a that it is not on the "Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012" ("Prohibited Entities List") posted at: <https://ogs.ny.gov/list-entities-determined-be-non-responsive-biddersofferers-pursuant-nys-iran-divestment-act-2012>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law § 165-a) is in violation of the above-referenced certifications,

the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.

**27. ADMISSIBILITY OF REPRODUCTION OF CONTRACT.** Notwithstanding the best evidence rule or any other legal principle or rule of evidence to the contrary, the Contractor acknowledges and agrees that it waives any and all objections to the admissibility into evidence at any court proceeding or to the use at any examination before trial of an electronic reproduction of this contract, in the form approved by the State Comptroller, if such approval was required, regardless of whether the original of said contract is in existence.