

## **34<sup>th</sup> STREET PARTNERSHIP(“34SP”)**



### **REQUEST FOR PROPOSALS**

### **TO MANAGE AND OPERATE A PUBLIC OUTDOOR RECREATION SUBCONCESSION AT HERALD SQUARE PLAZA**



**ISSUE DATE: 5/12/2025**

**DUE DATE: 6/20/2025**

## **I. INTRODUCTION**

The 34SP, a not-for-profit corporation organized under the laws of the State of New York, is seeking proposals (“Proposals”) from qualified firms (“Proposers”) by this request (“Request” or “RFP”) to manage and operate a public outdoor recreation subconcession (“Subconcession”) at a pedestrian plaza designated by the New York City Department of Transportation (“DOT”) located on Broadway and 6<sup>th</sup> Avenue between West 36<sup>th</sup> and West 32<sup>nd</sup> Streets, as more particularly hereinafter described (referred to as the “Plaza”; see also **Attachments A and B**). The Plaza is furnished with tables, chairs, umbrellas, and planters, and is open year-round (weather dependent).

It is the goal of the 34SP to work closely with the chosen Proposer to create a Subconcession that is successful and enhances the atmosphere of the Plaza and this vibrant neighborhood. The Subconcession should provide an amenity for those who work and live in the area as well as those who visit the Plaza.

The 34SP was created in 1992 and provides a number of programs and services in the area, including supplemental sanitation and security, marketing and promotion, homeless outreach, plaza maintenance, movable public seating, retail consulting, free public activities and events, horticulture service, and additional public improvement projects.

The Plaza was first implemented by DOT in 2009. The 34SP has a concession license agreement (“License Agreement”) with DOT for the management and operation of the Plaza; and maintenance and/or repair of certain amenities installed within the Plaza. The License Agreement allows for, among other things, the management and operation of subconcession(s), where no leasehold or other proprietary rights are offered. The 34SP will make copies of the License Agreement available to any Proposer who wishes to review it in its entirety. The 34SP is responsible for the maintenance and/or repair of certain amenities within the Plaza. Such maintenance services include but are not limited to cleaning and trash removal, snow removal (walkways), landscape maintenance, and repairs.

The aforementioned responsibilities are more specifically defined in the Services section of the License Agreement with DOT. The Subconcession should not present an undue burden on the operations of the 34SP and its maintenance and/or repair of the Plaza.

The Plaza is located in the heart of Midtown Manhattan connected to Herald Square Park and Greeley Square Park. Adjacent subways include the B, D, F, and M trains as well as the N, Q, R, and W trains. Nearby, access to the 1, 2, and 3 trains and the A, C, and E trains is also available. Since 2009, after NYC’s “Broadway Boulevard” project closed certain portions of Broadway to vehicular traffic, 34SP has maintained chairs, tables, planters, and umbrellas in the Plaza. 34SP’s sanitation staff diligently removes graffiti, litter, and refuse to keep parks and the Plaza clean. The Plaza and parks feature a variety of public programming throughout the spring and summer including musical performances, multi-cultural dance lessons, and various classes from fitness and crafts to professional development. Within a six-block radius of The Plaza, you will find various attractions and amenities such as Penn Station, Madison Square Garden, Koreatown, Bryant Park, and Madison Square Park. More information about the 34<sup>th</sup> Street Partnership and the Business Improvement District can be found on our website at [34thStreet.org](http://34thStreet.org).

## II. SUBLICENSE AGREEMENT

A. If a satisfactory Proposal is received, it is anticipated that the 34SP will enter into a sublicense agreement (the “Sublicense Agreement”) with the successful Proposer for an initial period of one (1) year commencing on the execution of the Sublicense Agreement, with four (4) one-year renewal options, contingent on the 34SP’s renewal of its License Agreement with DOT (“Sublicense Period”).

B. Although the Sublicense Agreement may be in effect for up to a total of XX years, a termination clause for both parties shall be included in the Sublicense Agreement. The successful Proposer will be required to execute terms of the Sublicense Agreement, which may include terms and conditions, including but not limited to those outlined in Appendix B.

C. The Proposer is advised that the Sublicense Agreement is subject and subordinate to the License Agreement with DOT.

## III. PERTINENT DATES

A. Questions related to this RFP should be submitted in writing to the 34SP no later than 12pm on 6/18/2025.

B. All Proposals are due by 5:00pm on 6/20/2025 (the “Closing Date”).

## IV. PROPOSAL SUBMISSION PROCESS

A. Five (5) copies of a written Proposal must be received by the 34SP by the Closing Date. Proposals received after the Closing Date will not be accepted.

Proposals shall be addressed as follows:

**34<sup>th</sup> Street Partnership**  
**1065 Avenue of the Americas**  
**Suite 2400**  
**New York, NY 10018**  
**ATTENTION: GRACE MCCARTNEY**

The 34SP will not accept verbal Proposals or Proposals submitted solely by facsimile, electronic mail, etc.

Proposals should be submitted electronically in addition to the hard copy proposals delivered to the address above. Electronic proposals may be submitted to Grace McCartney at [gmccartney@34bp.org](mailto:gmccartney@34bp.org).

All questions regarding the RFP must be in writing and should be directed to Grace McCartney, via electronic mail [gmccartney@34bp.org](mailto:gmccartney@34bp.org). Questions should be submitted no later than 12pm on 6/18/2025. Questions and responses from the 34SP will be shared with other Proposers.

B. Proposals shall contain the following:

- 1) Annual fee proposal;
- 2) Detailed description of proposed Subconcession operations, including but not limited to menus and price lists;
- 3) Statement of qualifications including but not limited to the number of years of experience providing a public outdoor recreation service, a list of all operating businesses, letters of reference and examples of other Subconcession operations if applicable;
- 4) Complete copies of all relevant permits, licenses, operating certificates and other documents that provide or otherwise evidence the Proposer's due authorization to conduct a public outdoor recreation establishment in the City of New York must accompany its response to this Proposal, together with copies of any violations issued by The New York City Department of Health and Mental Hygiene or any other City agency received in the last three years, and their status;
- 5) Financial statements indicating that the Proposer is in solid financial health and has the ability to manage and operate a business; and
- 6) Conceptual drawings of proposed Subconcession

## **V. TERMS GOVERNING RFP AND SELECTION**

### **A. Review of Proposals**

The 34SP will review all Proposals for completeness and compliance with the terms and conditions hereof. The 34SP reserves the right to request additional materials, including those it may deem useful or appropriate to evaluate each Proposer's qualifications and past experience, or clarification or modification of any submitted Proposal. Submission of a Proposal shall constitute the Proposer's permission to the 34SP to make such inquiries concerning the Proposer as the 34SP in its discretion deems useful or appropriate. The 34SP is not obligated to make any such request or to accept any unsolicited materials, clarification, modification or background information. The 34SP may conduct discussions with Proposers submitting acceptable proposals but it also may award a sublicense with no further discussions. The 34SP reserves the right, in its sole discretion, to reject at any time any or all Proposals, or to withdraw this Request without notice.

The 34SP will select the Proposer which, in the sole judgment of the 34SP and approved by DOT, most successfully demonstrates the necessary qualities to undertake the project as stated in IV(B) below. The 34SP reserves the full right to reject all Proposals if it so chooses. Under no circumstances will the 34SP pay any costs incurred by a Proposer in responding to this Request. The review or selection of a Proposal submitted by a Proposer will create no legal submission or equitable rights in favor of the Proposer, including, without limitation, rights of enforcement or reimbursement.

Failure by the 34SP for any reason to select a Proposer or to enter into a Sublicense Agreement with a Proposer once selected as a result of this Request will not create any liability on the part of

the 34SP or any of its members, officers, employees, agents, consultants or other Proposers. Submission of a Proposal in response to this Request will constitute a waiver of any claim against any of the foregoing for any costs incurred or for any matters arising thereunder or in connection with the review of such Proposal by the 34SP.

The successful Proposer shall be required to complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that successful Proposer, including this Subconcession, during the immediately preceding twelve-month period equals or exceeds \$100,000.

#### **B. Selection Criteria**

Proposals will be evaluated based on the following criteria (see section V below):

- Annual fee proposal (30 percent);
- The Proposer's expertise and experience as a public outdoor recreation operator (30 percent);
- The quality of proposed operations plan, including a safety plan for operation of the Subconcession (20 percent);
  - 34SP will view favorably proposers that prioritize safety and that include detailed safety plans in their operations plan
- Design proposal for Subconcession (and surrounding seating area, if applicable) (20 percent).

#### **C. Execution of Sublicense Agreement**

The submission of a Proposal shall constitute an agreement by the Proposer to execute a Sublicense Agreement with the 34SP, which may include terms and conditions outlined in Appendix B in addition to any other terms and conditions deemed appropriate by the 34SP and DOT. If the 34SP notifies the Proposer that it has been selected, then Proposer shall execute a Sublicense Agreement with the 34SP within 30 days of such notification and receipt of an executable copy. In the event that the successful Proposer fails to execute a Sublicense Agreement expeditiously for any reason within such period, the 34SP may void the selection and negotiate and execute a Sublicense Agreement with another Proposer. The 34SP may also decide not to enter into any Sublicense Agreement.

### **VI. RESPONSES TO THIS PROPOSAL**

#### **A. Proposer's Annual Fee for Subconcession**

Proposers shall provide a minimum annual fee proposal in response to this RFP. The 34SP reserves the right to negotiate a percentage value of the successful Proposer's annual gross revenues as either an (i) addition to the minimum annual fee; or (ii) option to the annual

fee, whereby the successful Proposer would pay the 34SP either the proposed annual fee or the negotiated percentage of annual gross revenues, whichever is higher on an annual basis.

**B. Description of Proposer's Experience and Qualifications**

Proposers shall provide information about all of their existing public outdoor recreation operations, including specific locations, number of years in business, information on customer base and/or sales, etc. Proposers shall highlight the quality and uniqueness of existing public outdoor recreation operations. If applicable, Proposers should provide specific examples of any existing or prior public outdoor recreation subconcession(s) operating in public spaces in New York City. Information on how these operations attract and retain customers and enhance and provide amenities for public spaces shall also be included. Information should also be provided regarding how these operations provided for public safety and prioritized safety within all aspects of their operation.

**C. Minimum and Additional Services to be Offered**

At a minimum, the successful Proposer shall provide a Subconcession at the Plaza. The placement of the Subconcession and surrounding seating area, if applicable, shall not block pedestrian walkways or in any way create an impediment to pedestrian and public safety in the Plaza. No products or merchandise beyond those approved for the public outdoor dining recreation subconcession shall be provided for sale without prior approval from the 34SP and DOT.

The successful Proposer must provide for the removal of all trash, litter and/or debris from the Subconcession area. Areas are to be cleaned throughout the course of the day such that these areas remain clean on a continuous basis. Trash, litter and/or debris build-up for end-of-day removal shall not be permitted.

The successful Proposer must also provide the following services:

- Seating Area – The successful Proposer must provide seating in conjunction with the Subconcession, subject to approval by 34SP and DOT. Such seating cannot be exclusively designated for Subconcession use only, unless otherwise approved by DOT. Tables and chairs may be stored on-site but it will be the responsibility of the successful Proposer to secure them each night. If the successful Proposer is providing a seating area specific to the Subconcession, the cost of supplying, maintaining, and replacing the tables and chairs would be the responsibility of the successful Proposer. Please refer to the site diagram for a layout of the Plaza.
- The successful Proposer must provide for the removal of all trash, litter and/or debris from the subconcession and its surrounding area, which must be cleaned throughout the course of the day such that these areas remain clean on a continuous basis. Trash, litter and/or debris build-up for end-of-day removal shall not be permitted.

- The successful Proposer must provide for the removal of wastewater and used cooking oil from Subconcession. Removal of surface stains resulting from wastewater and cooking oil will be at successful Proposer's sole expense.
- The successful Proposer must provide adequate additional daytime and/or nighttime security at its sole expense.

#### D. Other Considerations

- No permanent infrastructure will be allowed in the Plaza, nor is there any guarantee that storage in the area will be available. Moveable but non-mobile structures or other light structures that can change position will be considered, and the Subconcession must be self-sustaining with regard to water and power. The successful Proposer may need to be flexible at times due to events and other activities that occur in the Plaza that might temporarily displace the Subconcession.
- Menus and price lists shall be subject to the approval of the 34SP and DOT. The 34SP shall receive notification of any price increases for the duration of the Sublicense Period.
- The hours and days of operation are the successful Proposer's decisions, subject to approval by 34SP and DOT, provided that the Subconcession may not begin operating prior to 7:00 AM or after 11:00 PM on any given day, and that all tables and chairs must be removed from the Subconcession area by the successful Proposer no later than 11:59 PM.
- The successful Proposer will assume sole responsibility for the management and operation of the Subconcession including staffing, delivery of goods, security, clean up and compliance with other legal and regulatory requirements as mandated by the License Agreement, New York State or New York City agencies (e.g. Department of Health, Department of Consumer Affairs) and as otherwise required by applicable law.
- The successful Proposer will also agree to follow any additional use guidelines for the Plaza developed by 34SP by the City of New York.

#### E. Authority to Provide Public Outdoor Recreation Subconcession

Complete copies of all relevant permits, licenses, operating certificates and other documents that provide or otherwise evidence the Proposer's due authorization to conduct a public outdoor recreation subconcession in the City of New York must accompany its response to this Proposal, together with copies of any violations issued by The New York City Department of Health and Mental Hygiene ("DOHMH") and their status. The 34SP will require the successful Proposer to maintain the highest health code ratings.

The 34SP will require the successful Proposer, if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and

orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

The 34SP will require the successful Proposer to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

#### F. Design of Subconcession

Using **Attachment C**, the Subconcession Area Plan, each Proposer shall provide a layout of the area proposed to be used for the Subconcession.. The Subconcession Area Plan includes sections of Greeley Square Park, which is under the jurisdiction of the New York City Department of Parks and Recreation (DPR). The 34SP manages Greeley Square Park under the oversight of DPR. The portions of Greeley Square Park that Proposers may utilize are indicated in the Subconcession Area Plan. There are specific constraints to the space as indicated in **Attachment C**.

A description and conceptual drawings of the proposed Subconcession and surrounding area shall be provided with the responses to this Proposal. Such descriptions and drawings shall include but not be limited to color, dimensions, material and other similar specifications, accompanied by photographs and manufacturer specifications of proposed furnishings. Proposers should provide plans for pedestrian flow in the surrounding area of the Subconcession. The 34SP expects the Subconcession to enhance the aesthetic of the Plaza to integrate with the overall context of its surrounding area.

As referenced above, no permanent infrastructure will be allowed in the Plaza. Only moveable but non-mobile structures (i.e. no wheels) or other light structures that can change position will be considered.

Cost of utilities associated with operating the Subconcession will be the responsibility of the successful Proposer. Power available for operation of the Subconcession includes up to 900 amps from a 3 phase, 208-volt service. 34SP will make accommodations to deliver power to the Subconcession area in accordance with the successful Proposer's layout. There is WiFi service, an indirect water connection but no gas connection. A generator may be used for additional power if necessary. Use of a generator is subject to approval and subsequent inspections by any relevant governmental agencies . Water access is possible via an external hose connection.

Approval of the Subconcession design and surrounding area shall be at the sole discretion of the 34SP and the City, including but not limited to the following entities, LPC, PDC and DOT. The decision is final and binding upon the selected Proposer.

The 34SP will require the successful Proposer provide access to the Subconcession to people with disabilities as required by law.



## **VII. GENERAL TERMS**

**Attachment D** is for informational purposes only and highlights some of the terms and conditions of the License Agreement as it pertains to the Subconcession and its operation.

Notwithstanding the foregoing, the Proposer is advised that the Sublicense Agreement is subject and subordinate to the License Agreement.

Additionally, the successful Proposer shall be subject, without limitation, to the following terms and conditions:

1. The successful Proposer shall: (a) maintain adequate systems of internal control and keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by the successful Proposer at the Subconcession in accordance with generally accepted accounting practices and by clearly segregating gross revenues received from or attributable to operation of the Subconcession from the successful Proposer's other revenues; (b) submit monthly financial statements to 34SP; and (c) at the end of the Sublicense Period, provide to or make available for examination complete copies of such books and records indicating the outdoor public market's gross revenues during the Sublicense Period to PLAZA CONCESSIONAIRE, DOT, the Comptroller of the City of New York and other duly authorized representatives of the City of New York.
2. The successful Proposer shall be responsible, at its sole cost, for obtaining all required permits, licenses, approvals and authorizations from any and all appropriate City, State and Federal agencies necessary to manage and operate the Subconcession as contemplated in the Sublicense Agreement.
3. The successful Proposer shall procure and maintain insurance throughout the Sublicense Period, at its sole cost and expense, including but not limited to the following:
  - Commercial General Liability Insurance: of at least five million dollars (\$5,000,000) combined single limit per occurrence, and ten million dollars (\$10,000,000) aggregate, one million dollars (\$1,000,000) for personal and advertising injury, and two million dollars (\$2,000,000) products completed operations.
  - Workers' Compensation Insurance, Employers' Liability Insurance, and Disability and Paid Family Leave Benefits Insurance: in accordance with the laws of the State of New York.
  - Commercial Automobile Liability Insurance: covering all owned, non-owned, or hired vehicles of at least one million dollars (\$1,000,000) for any one occurrence.
  - Unemployment Insurance: as required by statute.

- Liquor Law Liability Insurance: not less than five million dollars (\$5,000,000) per occurrence

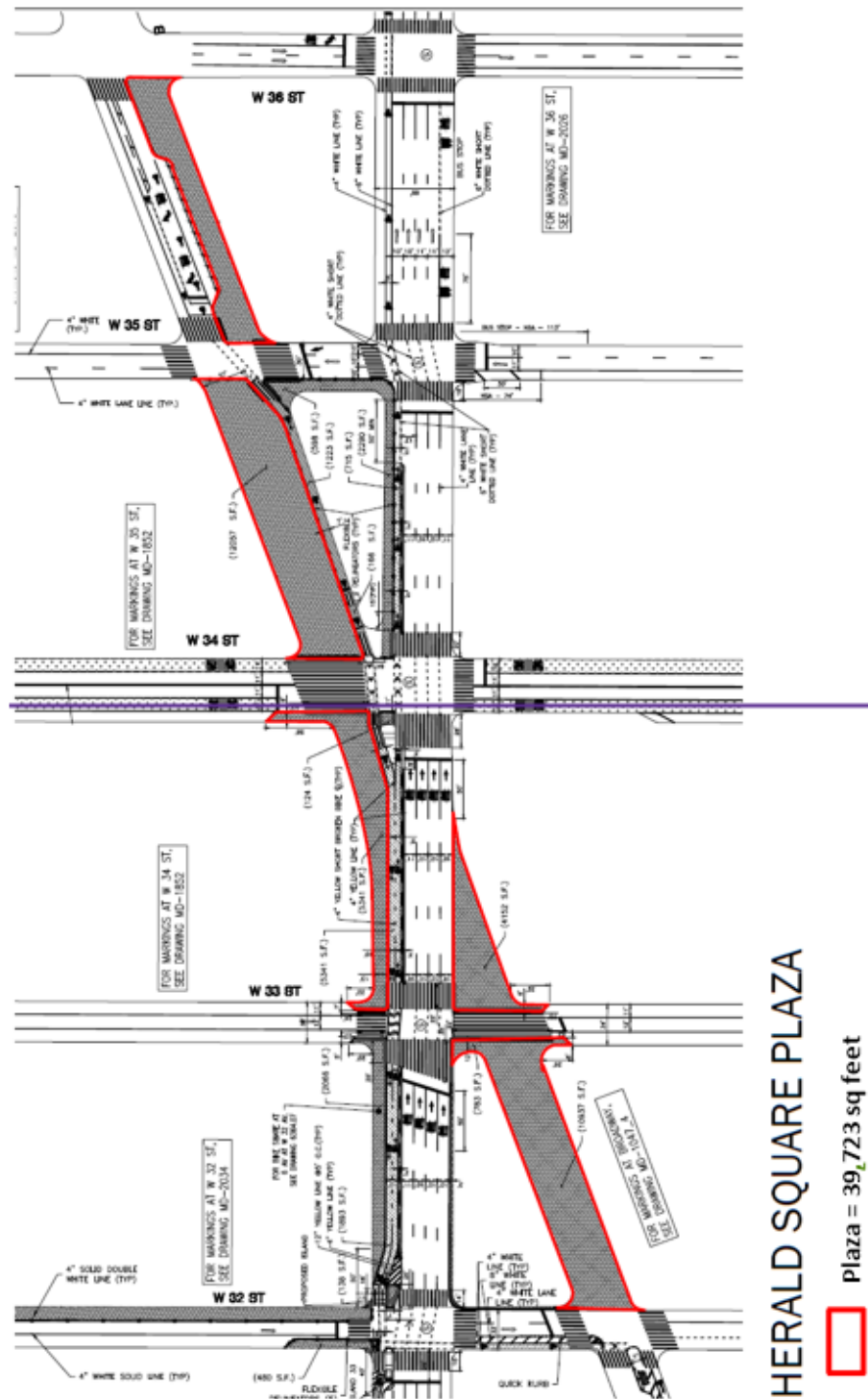
All insurance policies other than Worker's Compensation Insurance, Employer's Liability Insurance and Disability and Paid Family Leave Benefits Insurance must name 34SP and the City of New York, together with its officials employees and agents, as an Additional Insured with coverage at least as broad as the most recent edition of Insurance Services Office (ISO) Forms CG 20 26 and CG 20 37. 34SP reserves the right to require higher liability limits and other terms, if warranted.

4. The successful Proposer shall indemnify and hold harmless the 34SP and the City and its officials and employees with respect to the operation of the Subconcession.

The successful Proposer shall faithfully perform and carry out the provisions of Sublicense Agreement and cause its agents, employees, and invitees to comply with all federal, state and local laws rules, regulations, and DOT specifications, standards and policies now prescribed or which may hereafter be prescribed by DOT and the 34SP. The successful Proposer shall also comply with all federal, state, and local laws, rules, regulations, rules and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Subconcession and the successful Proposer's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

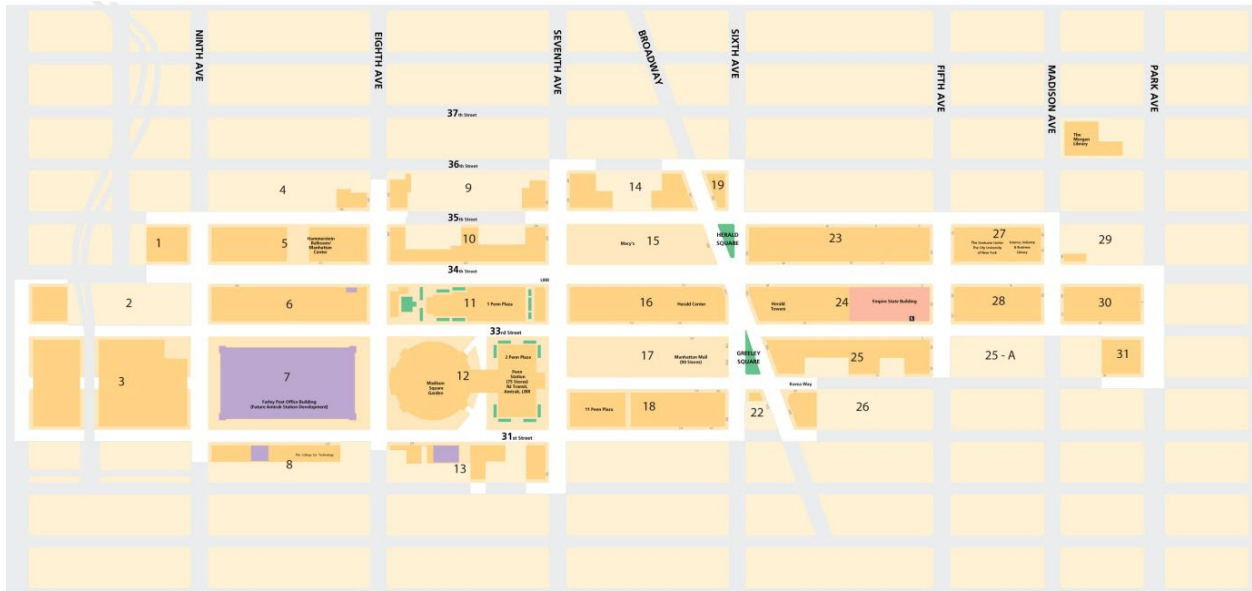
**ATTACHMENT A**

**PLAZA MAP**

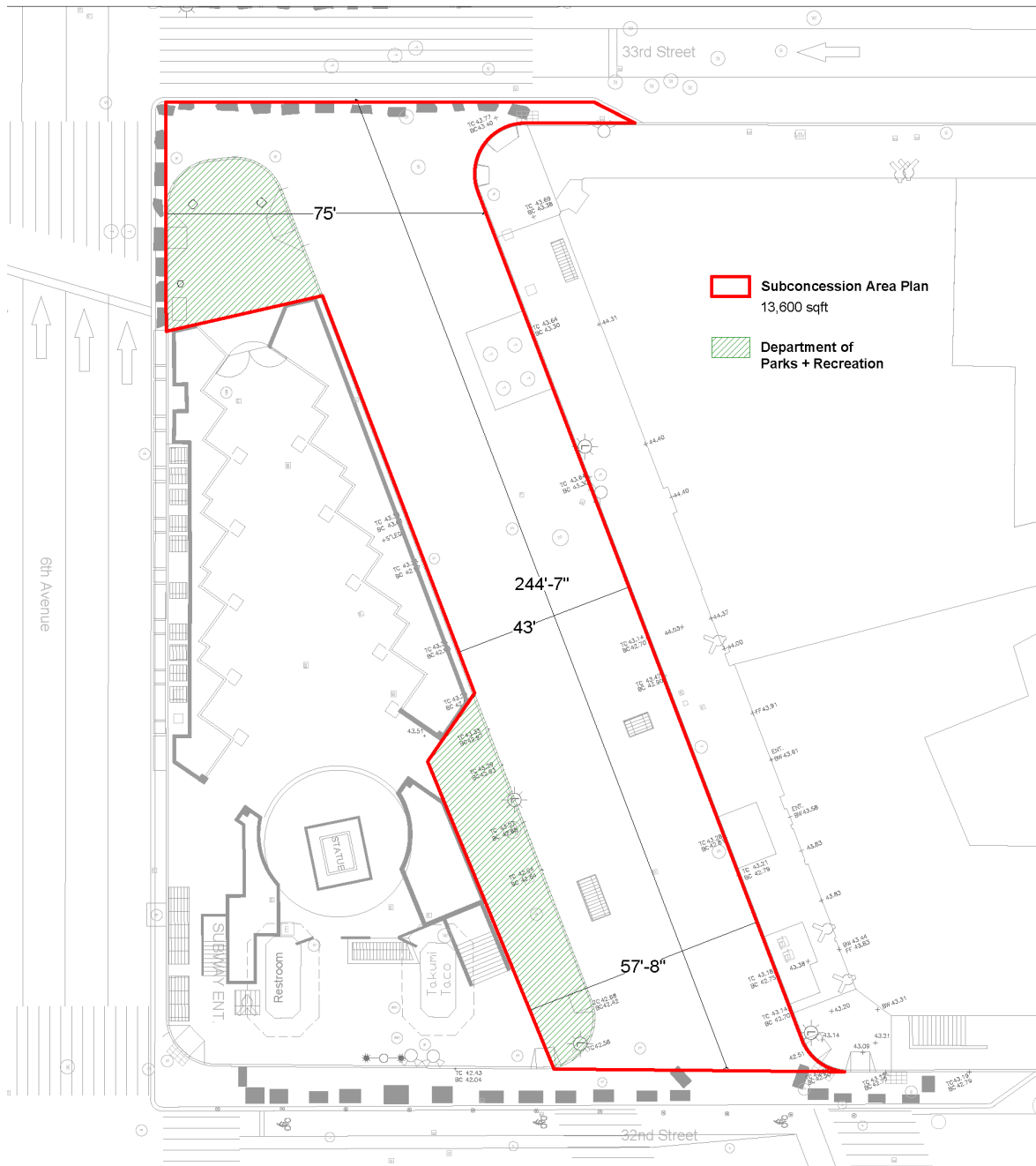


# ATTACHMENT B

## NEIGHBORHOOD MAP



**ATTACHMENT C**  
**SUBCONCESSION AREA PLAN**



## **ATTACHMENT D**

### **SELECT TERMS AND CONDITIONS INCLUDED IN THE LICENSE AGREEMENT PERTAINING TO THE SUBCONCESSION**

#### **3. SERVICES**

D. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.

E. Advertising (other than in a form identifying PLAZA PARTNER and its subconcessionaire(s) with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

G. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

(1) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).

(2) PLAZA PARTNER and its subconcessionaire(s) shall promptly notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

#### **6. SUBCONCESSION(S)**

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold"). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT's approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER's written request for approval.

F. (1) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents that perform operations involving the Licensed Plaza to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein.

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless as set forth herein. Any subconcession agreement(s) and/or other agreements entered into on or after the Commencement Date of this License that involve operations in the Licensed Plaza shall include the following, provided that the terms "SUBLICENSEE" and "PLAZA PARTNER" shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:

(a) SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the PLAZA PARTNER, City or others from damage, loss, injury resulting from any and all operations under this Agreement.

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including without limitation attorneys' fees and disbursements) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(c) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.

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

G. The subconcession agreement(s) may not be assigned without the prior written approval of DOT. Such approval or denial shall not be unreasonably delayed. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

## **7. OPERATION OF THE SUBCONCESSION(S)**

A. PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

- (1) Operate the Subconcession(s) as provided herein; and



(2) Continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s), consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30<sup>th</sup>) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30<sup>th</sup>) day following the termination of this License or the subconcession agreement(s), or June 30<sup>th</sup>, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include

the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating.

(1) PLAZA PARTNER shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) PLAZA PARTNER shall require its subconcessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) Collect and safeguard all monies generated under this License;
- (2) Maintain the Subconcession(s) in accordance with this License;

(3) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and

(4) Secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT. Such approval or denial will not be unreasonably delayed.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's prior written approval. Such approval or denial will not be unreasonably delayed.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell alcoholic beverages with the appropriate license from the State Liquor Authority ("SLA"). Such alcoholic beverages shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, and arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(3) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

(4) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional

Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(5) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(6) During the term of this License, PLAZA PARTNER shall or shall cause its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(7) PLAZA PARTNER shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

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

(9) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) and any subconcession structure is substantially completed, and DOT shall inspect the Subconcession(s) and/or any subconcession structure within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(10) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) and/or any subconcession structure for a period of thirty days

following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by PLAZA PARTNER.

(12) PLAZA PARTNER shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subconcession structure.

(13) PLAZA PARTNER shall keep DOT fully informed of PLAZA PARTNER's progress in the construction of the Subconcession(s) and/or any subconcession structure.

(14) All risks of construction of the Subconcession(s) and/or any subconcession structure are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) and any subconcession structure will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER's expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay all municipal fees and impositions in connection therewith.

W. Upon DOT's prior written approval, PLAZA PARTNER may use DOT's Standard Plaza Kiosk (as approved by the New York City Public Design Commission and as more particularly described in **Exhibit D**) to operate the Subconcession(s). Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, at its sole cost and expense, shall furnish all interior fixtures and equipment for the operation of the Subconcession(s). PLAZA PARTNER shall not apply any Revenue to any such interior fixtures and equipment. Ownership title of the Standard Plaza Kiosk belongs to and shall remain with the City throughout the Term.

X. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

- (1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or
- (2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

Y. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at

the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.