

New York City
Department of Transportation
Division of Franchises,
Concessions and Consents

Request for Bids

**FOR THE INSTALLATION, OPERATION
AND MAINTENANCE OF BEVERAGE
AND SNACK VENDING MACHINES AT
VARIOUS DEPARTMENT FACILITIES
IN THE FIVE BOROUGHES**

Solicitation Number: 84110MBAD537
Issue Date: July 12, 2010
Due Date: August 13, 2010
Department Contact: Owiso Makuku
(212) 839-6550



NEW YORK CITY
Michael R. Bloomberg, Mayor



NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
Janette Sadik-Khan, Commissioner

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REQUEST FOR BIDS

FOR THE INSTALLATION, OPERATION AND MAINTENANCE OF BEVERAGE AND SNACK VENDING MACHINES AT VARIOUS DEPARTMENT FACILITIES IN THE FIVE BOROUGHES

1. INTRODUCTION

The Department of Transportation of the City of New York (the "Department") is requesting bids for the installation, operation and maintenance of beverage and snack vending machines ("Machines") at various Department facilities in the five boroughs. The successful bidder ("Licensee") will enter into an agreement (the "License," attached hereto as Exhibit A) with the Department to operate such Machines at specified locations, more fully described below (the "Licensed Area").

The Licensed Area consists of areas designated within a variety of the Department's facilities, located in all five Boroughs of the City. Many of these sites are easily reached by private vehicle and have a parking area that may be utilized temporarily for the re-stocking of Machines. The Machines are located in a variety of settings within a facility and may be accessed by both employees and visitors to the building. A few of the sites have no adjacent or nearby convenience stores and/or supermarkets, causing employees to rely heavily upon snacks and beverages purchased from vending machines.

The Department reserves the right to postpone or cancel this Request for Bids ("RFB") or to reject any or all bids if, in its sole opinion, the Department deems such action to be in the best interest of the City of New York (the "City").

The Department shall not be liable for any costs incurred by bidders in the preparation of bids or for any work performed in connection therein.

2. DEPARTMENT CONTACT PERSON

The Department Contact Person for this RFB is Owiso Makuku. Any inquiries concerning this RFB should be directed to Ms. Makuku at (212) 839-6550 or by email, under the subject line "Vending Machines", at concessions@dot.nyc.gov.

All inquiries should be submitted in writing and will be answered in writing. Bidders are advised that the Department cannot ensure a response to inquiries received later than fourteen (14) calendar days before the Due Date. The Department shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFB it deems necessary prior to the Due Date in the form of written addenda.

3. TIMETABLE

The following schedule has been established for this RFB:

RFB RELEASE DATE: **JULY 12, 2010**

RECOMMENDED SITE VISIT: Sites listed in Exhibit B will be available for inspection by appointment from **JULY 26** through **JULY 30**, between the hours of 8 A.M. and 3 P.M. Inspections are not mandatory. Interested bidders should call the contact person listed in

Exhibit B no later than **JULY 23**, to schedule a visit at a particular site.

BIDS DUE: **AUGUST 13, 2010**, by no later than 11:00 A.M.

BIDS MUST BE RECEIVED BY NO LATER THAN 11 AM ON AUGUST 13, 2010, AT: NEW YORK CITY DEPARTMENT OF TRANSPORTATION, ACCO CONTRACTING UNIT, 55 WATER STREET, GROUND FLOOR, NEW YORK, NY 10041. BIDS WILL BE OPENED PROMPTLY AT 11 AM ON AUGUST 13, 2010.

ANY BIDS RECEIVED AFTER THE TIME AND DATE LISTED ABOVE SHALL BE STAMPED "LATE" AND RETURNED TO THE BIDDER UNOPENED AND SHALL NOT BE CONSIDERED FOR AWARD EXCEPT AS PROVIDED FOR IN SECTIONS 1-12(j)(2)(i) and (ii) OF THE CONCESSION RULES.

All bids should be delivered in person (which includes delivery by a courier service) at the time and place referenced above. Prospective bidders and their representatives must have photo I.D. to enter the 55 Water Street building and allow for time to sign into the building prior to submitting their bids. Please bring government-issued photo identification (i.e. driver license, passport, identification card). There is a separate entrance located on the south side of the building facing the Vietnam Veterans Memorial.

Bidders who have a physical disability and cannot deliver their bids to the 55 Water Street building should contact the Department Contact Person at least seven (7) days prior to the due date and special arrangements will be made.

Site visits are not mandatory for bidders.

4. BIDDING PROCEDURE

A. Bid Submission Instructions:

Each bid must meet the requirements listed below in the "Minimum Bid Submission Requirements" section.

Bidders shall use the bid submission form attached to this RFB.

The bid and all supporting documentation should be typed on both sides of 8 ½" x 11" paper. Pages should be paginated. The City requests that all bids be submitted on paper with no less than 30% post-consumer material content, i.e., the minimum recovered fiber content level for reprographic papers recommended by the United States Environmental Protection Agency (for any changes to that standard please consult: <http://www.epa.gov/cpg/products/printing.htm>). The bidder should state whether its response is printed on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in these instructions. Failure to comply with any of the instructions set forth in this paragraph will not be considered non-responsive.

No bids should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to the Department's approval. Oversized drawings may be submitted, but must be accompanied by 8½" x 11" sectionals or reductions to 8½" x 11". No telegraphic or facsimile bids will be accepted. The bid will be evaluated on the basis of its content, not length.

Bids must be submitted in a sealed envelope. The following information should be printed on the outside of the envelope:

1. Bidder's name and address
2. The Solicitation Number
3. Bid due date and time
4. The following address:

ACCO Contract Management Unit
New York City Department of Transportation
55 Water Street, Ground Floor
New York, NY 10041

Upon the Department's request, Bidders shall be required to submit completed original copies of VENDEX Questionnaires (Vendor and Principal Questionnaires) to the City's Mayor's Office of Contract Services. In addition, any person or entity with at least a 10% ownership interest in the submitting vendor (including a parent company) is responsible for completing VENDEX Questionnaires. In such event, the concession award will be subject to completion of the VENDEX Questionnaires and review of that information by the City Department of Investigation.

B. Minimum Bid Submission Requirements:

Each bid must include the following items.

1. Fully completed Bid Page, attached hereto, stating the first year's bid fee and the number of addenda received, if any;
2. Notarized Bidder's Affidavit;
3. Completed Bidder's Affirmation and Declaration; and
4. Bid deposit (see Section 4C of this RFB).

Failure to comply with these requirements shall result in a determination of non-responsiveness, and the bid shall no longer be considered for award.

The following item should be included in the bid package.

1. Completed Concession Questionnaire

Any bid that does not include this item shall be found non-responsive and be disqualified without further consideration if such item is not submitted to the Department within 10 business days of notification by the Department.

C. Bid Deposit

Each bid must include a bid deposit in the amount of ten percent (10%) of the bid fee for the first year of the term, in the form of a certified check payable to the City's Office of the Comptroller (the "Comptroller"). The deposit of the successful bidder will be applied towards the security deposit (see Section 12B of this RFB). The bid deposit will be returned to the unsuccessful bidders after the License is signed with the successful bidder. In the event of the failure of a successful bidder to execute a License in accordance with the terms of its bid, the bid deposit shall be retained by the City unless the bid has been permitted to be withdrawn. No plea of

mistake in such accepted bid shall be available to the bidder for the recovery of the deposit or as a defense to any action based upon such accepted bid.

ALL BIDS ARE SUBJECT TO THE RULES OF THE FRANCHISE AND CONCESSION REVIEW COMMITTEE.

5. TERM

The License shall be for a term of three years, with two (2) three-year renewal options to be exercised at the sole discretion of the Department. The License is revocable at the will of the Department upon twenty-four (24) hours' written notice from the Department, with or without cause.

6. BID AMOUNT

The suggested minimum bid amount for the Licensed Area is \$5,000.00 for the first year of the term. There will be a two percent (2%) compounded increase for each additional year of the concession.

7. LICENSED AREA

The Licensed Area is those places designated by the Department in the buildings identified on the attached Exhibit B for the placement and operation of Machines pursuant to the License.

The Licensee shall be required to install, operate and maintain at least one soft drink Machine and/or one snack Machine at each location, as listed on Exhibit B.

The Licensee will be required to serve all of the locations identified on Exhibit B. The Licensee shall use the Licensed Area for Machines only.

The Department reserves the right to require the removal or relocation of any or all of Licensee's Machines within the Department's facilities. This may result in changes to the Licensed Area. In the event that the Department requires the removal of one or more Machines from the Licensed Area, Licensee may request a proportionate reduction of the compensation owed the City. Additionally, the Department may request the addition of a new Machine(s) with a proportional increase in the compensation owed the City (see Article 5, paragraph C of the License).

The Department will not provide storage space in any location. Licensee may arrange for its own storage space at an off-site location. Absolutely no property, supplies, equipment, etc., may be placed outside the Licensed Area. Any materials outside of the Licensed Area may be confiscated by the Department's representatives.

The Licensed Area will be licensed in an "as is" condition and will not be subdivided.

8. MAINTENANCE AND SERVICE

The Licensee shall be responsible for ensuring that the Machines are in proper working order and fully stocked at all times.

A trash receptacle must be provided proximate to each beverage or snack machine within the Licensed Area. The Licensee will also be responsible for complying with any and all recycling regulations. Separate receptacle(s) shall be made available for recyclable materials. The Licensee will make all arrangements for the emptying of the trash and recycling receptacles often enough so that the contents do not spill out into the adjacent area.

9. INSTALLATION AND REMOVAL OF MACHINES

The Department reserves the right to choose the location and placement, within the Licensed Area set forth in Exhibit B, of each Machine installed, in order to avoid interference with Department operations.

The Department further reserves the right, after installation of the Machines, to request the removal or relocation of any or all Machines within a Department facility if they interfere with the Department's operations or with the movement of employees or the general public. The Department must approve any new Machine(s) in the Licensed Area prior to installation. The Licensee shall remove or relocate the Machines at its sole cost or expense upon twenty-four (24) hours written notice from the Department.

In the event that the Licensed Area or any portion thereof is required by the Department for construction, repairs or other work, the Machines shall either be relocated or removed, at the discretion of the Department. In the event of such construction, repair or other work, Licensee shall vacate the property upon thirty (30) days' written notice from the Department. In the event of an emergency, the premises shall be vacated upon notification of the Licensee of said emergency.

All property of the Department, City, or owner of the building in which the Machines are installed that is damaged or altered in any way by the installation, removal, operation or maintenance of the Machines shall be promptly repaired or replaced by the Licensee at its sole cost and expense to the complete satisfaction of the Department. Upon the expiration or sooner termination of the License, the Licensee, at its sole cost and expense, shall remove all Machines from the Licensed Area. The Licensee shall restore the Licensed Area to its proper condition to the satisfaction of the Department, reasonable wear and tear excepted. The cost of any such work shall be borne by the Licensee.

10. MACHINE MALFUNCTION

The Licensee will be solely responsible for refunding, in cash, any money that is lost in the Machines due to malfunction.

Licensee shall conspicuously affix a plate to each Machine installed, with Licensee's name, address, and telephone number through which customers can submit complaints and requests for refunds.

Upon receipt of a complaint from a customer concerning a malfunctioning Machine, the Licensee will be responsible for:

- A. Registering the name, address, and telephone number of the complainant;
- B. Verifying the complaint with an on-site inspection within twenty-four hours of the complaint; and

C. Refunding the customer's money, if the complaint is verified.

If the malfunctioning Machine cannot be repaired immediately, it must either be removed and replaced by the Licensee, at Licensee's sole cost and expense, or be taken out of service. If the Licensee chooses to take the machine out of service, the coin slot must be taped closed and a sign placed on the Machine indicating that the Machine is out of order. Under no circumstances shall a Machine be removed or remain out of order for more than five (5) business days. Licensee must immediately report to the Department any Machine removed, taken out of service, or replaced.

11. ELECTRICITY CHARGES

Bidders should take into consideration compensation to the Department for the monthly electrical charges incurred by various machines. There will be a separate charge for the monthly electrical charges for each machine. A schedule of the current monthly electrical charges consumed by similar snack and beverage machines in City buildings is attached for reference purposes as Exhibit C.

Prior to executing the License, the successful bidder shall provide the Department with a list of the Ampere Rating for each Machine. The electricity charges for each Machine are in addition to the monthly License Fees. The electricity charges will be determined by the Department based on the information provided.

12. SPECIFICATIONS

A. Upon award of the concession, the Licensee will be required to comply with certain provisions including, but not limited to, insurance requirements and indemnification provisions. A copy of the License is attached as Exhibit A. The terms of the License are non-negotiable.

B. Simultaneous with the execution and delivery of the License, the Licensee will be required to furnish a certified check equal to six months or half of the first-year occupancy charges, made payable to the Comptroller as security for the payment of occupancy charges and for the faithful performance by the Licensee of all terms, covenants and provisions of this License. The amount of the check will be reduced by the amount of the Bid Deposit already deposited with the Comptroller (see Section 4C of this RFB).

C. The Licensed Area shall be used for the operation of Machines only. All items sold must be pre-approved in writing by the Department. Bidders should submit with their bids a list of the items to be sold and approximate prices (see the attached Concession Questionnaire).

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

E. Bidders should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If the successful bidder wants to sell merchandise that uses the City's trademarks, the successful bidder shall purchase such merchandise from authorized licensees of the City. The sale of

counterfeit or unlicensed merchandise at this concession shall result in the immediate termination of the License and seizure of the security deposit.

F. Bidders should also be aware that the City has developed New York City Beverage Vending Machines Standards ("Standards"), which are attached as Exhibit D. The successful concessionaire will be required to comply with these Standards, which apply to all beverage vending machines located on City property, for the entire license term. None of the locations listed in Exhibit B are regularly used by children age 18 or younger.

G. Food standards for vending machines may be implemented by the City during the term of the License. In addition, the beverage and/or food standards may be changed during the term of the License. The Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of vending machines at all vending locations. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on the Licensee's revenue, upon submission to the Department of documentation satisfactory to the Department demonstrating such effect, the Licensee and the Department may amend the License as agreed upon between Department and the Licensee. If the Department and the Licensee are unable to reach agreement on such amendment, the Licensee may terminate the License upon 90 days prior written notice to the Department.

H. The Licensee must sell all items in accordance with all applicable federal, state, and local rules and regulations. Licensee shall cooperate with the Department and other government agencies and take all actions necessary to comply with all applicable federal, state and local laws, rules and regulations. It is Licensee's sole responsibility to comply with all applicable laws, rules and regulations and secure all required licenses and permits.

I. The Licensee must keep the Licensed Area and its surrounding area clean, neat and orderly at all times. The Licensee will be responsible for cleaning the area within ten (10) feet of the Licensed Area. The Licensee will also be responsible for the removal of all rubbish generated by the Machines. Use of any type of trash receptacle must be approved by the Department.

J. The Licensee shall at its sole cost and expense, keep the exterior of the Machines clean and free from graffiti and shall remove or cause the removal of any graffiti placed thereon during Licensee's occupancy of the Licensed Area.

K. The Licensee will be responsible for routine cleaning and maintenance of the Machines.

L. The Licensee must supply all equipment necessary for the operation of this concession. It will be the responsibility of the Licensee to remove equipment and return the Licensed Area to the Department in as good condition as at the commencement of the license term.

M. The Machines shall be operated within the Licensed Area as directed by the Department. No additional space is to be used for vending, storage, advertising or any other purpose. Any materials outside of the Licensed Area may be confiscated by the Department's representatives.

N. The Licensee shall comply with all City, State and Federal laws, including those regarding access for people with disabilities.

O. All Machines installed at 66-26 Metropolitan Avenue, Queens, shall accept bills, but not coins. These Machines shall give change in coins. Prices at these Machines shall be the same as prices at other locations.

13. INSPECTION

At all times during the term of this concession, the Department or its agents may, without notice to Licensee, enter upon the Licensed Area for the purpose of inspecting the Machines and the Licensed Area.

14. PROHIBITED ITEMS

The sale of the following items shall be prohibited:

1. Anything that promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful;
2. Any tobacco products and accessories; and
3. Any food or beverage that requires "Processing" as defined by the NYC Department of Health and Mental Hygiene.

15. ADVERTISING AND SIGNAGE

During the entire term of this License, the Licensee shall not place or allow the placement of any advertisement, notice or sign in or on the Licensed Area or the Machines without the prior written approval of the Department. The following display or placement of advertising shall be strictly prohibited:

1. Advertisements for tobacco or alcoholic beverages; and
2. Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11.

In addition, advertising of product brands is strictly prohibited without the Department's prior approval.

Any such prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from the Department. The Licensee, upon twenty-four (24) hours' notice, shall remove any and all unauthorized advertising or signage placed in or on the Licensed Area or the Machines.

The Department may require Licensee to place and affix, at Licensee's sole cost and expense, on any of the structures, appurtenances or any other part of the outside or inside of the Licensed Area, appropriate signs designating the Licensed Area as City-owned under the jurisdiction of the Department, and the Licensee shall, at its own cost and expense, maintain such signs.

16. FREEDOM OF INFORMATION LAW REQUIREMENTS

All RFB submission materials shall become the property of the City and the Department. Such materials shall generally be made available for inspection and copying by interested parties upon written request, except when exempted from disclosure under the New York State Freedom of Information Law.

The Department is subject to the New York State Freedom of Information Law, which governs the process for the public disclosure of certain records maintained by the Department. (See *Public Officers Law, Sections 87 and 89.*) Individuals or firms that submit bids to the Department may request that the Department except all or part of such a bid from public disclosure, on the grounds that the bid 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. The request for such an exception must be in writing and state, in detail, the specific reasons for the requested exception. It must also specify the bid or portions thereof for which the exception is requested.

In the event the Department grants the request for exception from disclosure, the Department shall keep such bid or portions thereof in secure facilities.

17. BID INFORMATION

A. The award of this concession is subject to applicable provisions of federal, state and local laws and executive orders requiring affirmative action and equal employment opportunity.

B. The Department shall not be liable for any costs incurred by bidders in the preparation of bids or for any work performed in connection therein.

C. The Department shall issue responses to inquiries related to substantive issues and any other corrections or amendments to the RFB it deems necessary prior to the bid due date in the form of written addenda.

D. It is each bidder's responsibility to assure receipt of all addenda issued by the Department by verifying with the Department Contact Person prior to submitting a bid that all addenda have been received. Bidders shall acknowledge the number of addenda received as part of their bids in the appropriate space on the Bid Page.

E. A bidder may submit a modified bid to replace all or any portion of a bid submitted up until the bid submission deadline. Only the last version of the bid shall be considered. Late bids and modifications shall not be considered, except as provided for in Sections 1-12(j)(2)(i) and (ii) of the Concession Rules.

F. Bidders may withdraw their bids from consideration at any time before the bid submission deadline by submitting written notice to the New York City Department of Transportation, ACCO Contracting Unit, 55 Water Street, Ground Floor, NY, NY 10041. A bidder may not withdraw its bid before the expiration of forty-five (45) calendar days after the date of the opening of bids; thereafter a bidder may only withdraw its bid by submitting written notice to the Department in advance of an actual grant of the License.

G. The License shall be awarded to the highest responsive and responsible bidder.

H. A responsible bidder is one who has the capability in all respects to perform fully the License requirements. Factors affecting a bidder's responsibility include, but are not limited to, completeness of questionnaire, financial resources, experience, record of past performance and business integrity and results of any VENDEX review.

I. A responsive bidder is one whose bid comports with the requirements of this RFB. Factors affecting a bidder's responsiveness include, but are not limited to, compliance with all the terms, conditions, and material requirements contained in this RFB, submission of bids in the specified form together with all required disclosure documents by the bid submission deadline, and submission of the required bid deposit.

J. Bidders have the right to appeal a determination of non-responsiveness and/or non-responsibility and have the right to protest a solicitation and award pursuant to the Concession Rules found in Title 12, Chapter 1 of the Rules of the City of New York.

K. The Comptroller is charged with the audit of concession agreements in New York City. Any person or entity who believes that there has been unfairness, favoritism, or impropriety in the bid process should inform the Comptroller, Office of Contract Administration, 1 Centre Street, New York, New York 10007; telephone number (212) 669-2323.

EXHIBIT A: LICENSE

DEPARTMENT OF TRANSPORTATION
REVOCABLE LICENSE

This LICENSE, made and entered into this ____ day of _____ 2010, by and between the City of New York, acting by the Commissioner of the New York City Department of Transportation, hereinafter, "Department" or "Licensor", located at 55 Water Street, 9th Floor, New York, NY 10041 and _____, hereinafter "Licensee", located at _____.

WITNESSETH

WHEREAS, the Licensor issued a Request for Bids for a revocable license to install, operate, and maintain beverage and snack vending machines at various Department facilities in the five boroughs ("RFB"); and

WHEREAS, the Licensee submitted a Bid for a revocable license to install, operate, and maintain beverage and snack vending machines at various Department facilities in the five boroughs; and

WHEREAS, the Licensor is willing to grant a license to the Licensee to install, operate, and maintain beverage and snack vending machines at various Department facilities in the five boroughs at the locations specified herein pursuant to the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

Registration No.: _____

ARTICLE ONE

DEFINITIONS

The following words and expressions shall, whenever they appear in this License, be construed as follows:

- City The City of New York.
- Commissioner The Commissioner of the Department of Transportation, or his/her duly authorized representative.
- Law or Laws..... Includes, but shall not be limited to, the Constitution of the State of New York, the Charter of the City of New York, the Administrative Code of the City of New York, a local law of the City of New York, and any ordinance, rule or regulation having the force of law.
- Licensed Area..... See Article Three herein.
- Licensee The entity which executed this License, whether a corporation, firm, partnership, joint venture, individual or any combination thereof, and its/their/his/her personal representatives, executors, administrators, assigns and agents appointed to act for said party in the performance of the work described herein.
- Licensor or Department..... The New York City Department of Transportation.

ARTICLE TWO

THE REVOCABLE LICENSE

The Licensor hereby grants to the Licensee the right to enter various Department facilities in the five boroughs for the purpose of installing, operating, and maintaining beverage and snack machines for a period of three (3) years, commencing on _____, 2010. This License shall continue only at the pleasure of Licensor and shall be revocable at any time by notice in writing, but in no case shall extend beyond _____, 20____, unless renewed as provided below. This License may be renewed for two (2) additional three (3) year terms, to be exercised at the sole discretion of the Licensor subject to termination and revocation as hereinafter provided. Licensor shall provide Licensee with sixty (60) days' advance written notice of its intent to renew.

ARTICLE THREE

LICENSED AREA

- (A)** The Licensed Area is those portions of Licensor's facilities listed on Appendix A, attached hereto and made a part hereof, designated for the installation, operation, and maintenance of beverage and snack vending machines ("Machines"). The Licensee shall install, operate, and maintain at least one snack and/or one soft drink Machine at each location as listed on Appendix A.
- (B)** Licensor reserves the right to choose the location and placement, within facilities listed on Appendix A, of each Machine installed in order to avoid interference with Department operations and obligations of City marketing partnerships.
- (C)** Licensor reserves the right to require the removal or relocation of any or all of Licensee's Machines and to request the addition of Machines within Licensor's facilities. Licensee shall remove or relocate the Machines at its sole cost and expense upon twenty-four (24) hours written notice from Licensor. Licensee shall add Machines at locations requested by Licensor or decline Licensor's request within thirty (30) days of written notice from Licensor. The location and placement of relocated or additional Machines shall be subject to the approval of Licensor. If Licensor requires the removal of one or more Machines from the Licensed Area, Licensee may request a proportionate reduction of the compensation owed the City in accordance with Article Five (C) of this License. If Licensee installs one or more additional Machines at Licensor's request, Licensor shall require a proportionate increase of the compensation owed the City in accordance with Article Five (C) of this License. In the event of an emergency, the premises shall be vacated upon notification of the Licensee of said emergency.
- (D)** All property of the Department, City, or owner of the building in which the Machines are installed that is damaged or altered in any way by the installation, removal, operation or maintenance of the Machines shall be promptly repaired or replaced by the Licensee at its sole cost and expense to the complete satisfaction of the Department. Upon the expiration or sooner termination of the License, the Licensee, at its sole cost and expense, shall remove all Machines from the Licensed Area. The Licensee shall restore the Licensed Area to its proper condition to the satisfaction of the Department, reasonable wear and tear excepted. The cost of any such work shall be borne by the Licensee.
- (E)** Licensor will not provide storage space in any location. Licensee may arrange for its own storage space at an off-site location. Absolutely no property, supplies, equipment, etc., may be placed outside the Licensed Area. Any materials outside of the Licensed Area may be confiscated by Licensor's representatives.
- (F)** The Licensed Area will be licensed in an "as is" condition. The Licensed Area will not be subdivided.

ARTICLE FOUR

NOT A LEASE

- (A) It is expressly understood that no land, structure, space, improvement or equipment is leased to Licensee, but that during the term of this License, Licensee shall use the Licensed Area solely for the purpose herein provided. It is the express understanding of the parties that this document is not a lease, does not create any estate in the Licensee and shall not be interpreted or construed as a lease or as a document creating any landlord/tenant relationship.
- (B) Licensee shall provide, at all times, free access to the Licensed Area to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes.

ARTICLE FIVE

COMPENSATION

- (A) The Licensee hereby covenants and agrees that during the term of this License it will pay to the Licensor the compensation set forth below for the right to install, operate, maintain and repair snack and beverage vending machines in various Department facilities granted herein by the Licensor.

- (B) **GUARANTEED ANNUAL COMPENSATION**

The Licensee shall make guaranteed annual compensation payments to be paid in twelve (12) equal monthly installments, beginning on the first day of each month during the term of this License and any renewal thereof. The guaranteed annual compensation payment for the first year of this License shall be \$____.00. Accordingly, each monthly installment payment shall be in the amount of \$_____. The annual compensation payment shall be increased by two percent (2%) compounded each year.

- (C) Within thirty days after Licensor issues a notice to remove Machines pursuant to Article Three of this License, Licensee may apply for a proportionate reduction of the compensation owed to the City. Licensee shall submit with any request for a reduction in compensation, a collections statement certified by a Certified Public Accountant retained at the sole cost and expense of the Licensee, demonstrating Licensee's gross receipts from the Machines to be removed as a percentage of the Licensee's total gross receipts from Machines under this License covering the period from the date the Machines were installed until the date of the removal notice or the six months preceding the removal notice, whichever is shorter. The collections statement shall be accompanied by meter readings showing gross receipts from all Machines for the same period. Within thirty days of the receipt of the collections statement and any and all supporting documents that Licensor may additionally request, Licensor shall, subject to the audit provisions set forth at Article 25 of this License, amend this License to reduce the compensation owed to the City by Licensee. The compensation payable to the City shall be reduced by the same percentage as the percentage by which the Machines removed at the request of the

Licensor contribute to Licensee's gross receipts from all Machines, as demonstrated on the collections statement and meter readings. The reduction in compensation shall be effective from the date of the removal of the Machine(s) for the balance of the term of the License.

- (D) Within thirty days after Licensor issues a notice to add Machines ("Notice to Add") pursuant to Article Three of this License, either (a) Licensee shall notify Licensor in writing that it is declining to add the new Machine(s), in which case there shall be no change in compensation owed to the City, or (b) Licensee shall install the requested Machine(s) and the compensation owed to the City shall increase in proportion to the increase in receipts from the Machine(s), as described in this paragraph. For the first six (6) months after the date of installation of the additional Machine(s) ("Installation Date"), compensation owed to the City shall increase by twenty dollars (\$20) per month for each new Machine. Within five months of the Notice to Add, Licensee shall submit a collections statement certified by a Certified Public Accountant retained at the sole cost and expense of the Licensee, demonstrating the increase in the Licensee's gross receipts with the additional Machine over a three (3) month period, quantified as an amount equal to that Machine's gross receipts as a percentage of the total gross receipts taken in by the remaining Machines in the same three (3) month period. The collections statement shall be accompanied by meter readings showing a breakdown of gross receipts from each Machine for the same period. Within thirty days of the receipt of the collections statement and any and all supporting documents that Licensor may additionally request, Licensor shall inform the Licensee of any required increase in the compensation owed to the City under this License. The compensation payable to the City shall be increased by the same percentage as the percentage by which the Machines added at the request of the Licensor contribute to Licensee's gross receipts from all Machines, as demonstrated on the collections statement and meter readings. The increase in compensation shall be effective from the date of the installation of the Machine(s) for the balance of the term of the License. If the increase in compensation per Machine exceeds twenty dollars (\$20) per month, Licensee shall pay the difference for the first six (6) months after the Installation Date to Licensor within 30 days of notice from Licensor. If the increase in compensation per Machine is less than twenty dollars \$20 per month, Licensor shall reimburse the Licensee for the difference in the form of a credit on future payments.
- (E) Licensee shall submit all payments to:
- The Department of Transportation
Office of Revenue and Accounts Receivable
55 Water Street
New York, NY 10041**
- (F) Should the License term commence on any day other than the first day of a calendar month, the compensation payment for any initial or final fractional month shall be calculated on a per diem basis using a thirty (30) day month.
- (G) Non-receipt of an invoice from the Licensor does not relieve the Licensee of its obligation to pay the full monthly compensation payment in advance by the first day of any month.

- (H) A twenty-five dollar (\$25.00) charge shall be paid by the Licensee for any check issued to Licensor which is returned for insufficient funds. Said payment shall be considered additional compensation and shall be paid pursuant to the provisions of Article 24.
- (I) Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License and shall be a default hereunder. Failure by the Licensor to insist upon the strict performance by Licensee of Licensee's obligations to pay late charges shall not constitute a waiver by the Licensor of his/her right to enforce the provisions of this Article.

ARTICLE SIX

LATE PAYMENT CHARGE

If Licensee fails to pay any monthly compensation fee and/or any Additional Compensation Charge as set forth in Article 24, below, in full by the tenth day of any monthly period, Licensor, at its sole discretion, may impose a late payment charge for that monthly period equal to two percent (2%) of any fee and/or charges Licensee is required to pay, including those charges described in Article 5(H), and/or Additional Compensation Charge due, but not less than a minimum charge of ten dollars (\$10.00) ("Late Payment Charge"). Such Late Payment Charge shall be compounded monthly and shall be collectible as an Additional Compensation Charge. Failure to demand a Late Payment Charge shall not waive Licensor's right to collect it at a later date.

ARTICLE SEVEN

ACCEPTANCE OF FEE AFTER EXPIRATION OF TERM

It is expressly agreed that Licensor's acceptance of any payment from Licensee for the continued use of the Licensed Area beyond the natural expiration (i.e. other than by revocation) of the term of this License shall not give rise to any landlord/tenant relationship between the parties, but rather shall be deemed to create a day-to-day license, at the same daily license fee rate.

ARTICLE EIGHT

SECURITY DEPOSIT

- (A) Upon the execution of this License, the Licensee shall furnish a Security Deposit for the payment of the annual compensation due to the Licensor and for the faithful performance by the Licensee of all the terms, covenants or provisions of this License. The Security Deposit shall be in the form of a certified check, payable to the Comptroller of the City of New York, and shall be equal to one half of the annual occupancy charges of \$_____ for the first year, and shall be increased or decreased in proportion to any changes in the occupancy charges in any subsequent years. The amount of the check will be reduced by the amount of the Bid Deposit the Licensee submitted with its Bid (see Section 4C or the RFB).

- (B) If any compensation or other sums payable by Licensee to Licensor shall become overdue and unpaid, or should Licensor make payments on behalf of Licensee or should Licensee fail to perform any of the terms or conditions of this License, then Licensor may, at its option and without prejudice to any other remedy which Licensor may have, appropriate and apply the Security Deposit, or as much thereof as may be necessary to compensate Licensor, toward the payment of the annual compensation rate and/or other charges due from Licensee toward any loss, damage or expense sustained by Licensor resulting from such action or inaction by the Licensee. In such an event, Licensee shall, within ten (10) days of written demand, restore the Security Deposit to the original sum deposited. In the event that the Licensee shall fully and faithfully comply with all the terms, conditions and covenants of this License and shall pay all compensation and/or other charges payable by Licensee to Licensor, Licensor shall return the Security Deposit to Licensee, without interest, following the date of expiration of this License or sooner termination as provided herein, subject to the surrender of the Licensed Area by Licensee in compliance with the provisions of this License.
- (C) In the event any bankruptcy, insolvency, reorganization or other debtor-creditor proceedings shall be instituted against the Licensee or its successor, assigns or the Guarantor, if any, then the Security Deposit shall be applied first to any compensation payments and/or other charges due to the Licensor for all periods prior to the institution of such proceedings. The remaining balance of the Security Deposit, if any, shall be returned to the Licensee.

ARTICLE NINE

USE OF THE LICENSED AREA

- (A) Licensee shall use the Licensed Area for: the installation, operation, maintenance and repair of beverage and snack vending machines, as more fully described in the Request for Bids. Licensee shall supply all equipment necessary for operations subject to this License. The Machines shall be operated within the Licensed Area as directed by the Department. No additional space is to be used for vending, storage, advertising or any other purpose. Any materials outside of the Licensed Area may be confiscated by the Department's representatives.
- (B) The sale of the following items shall be prohibited: (1) anything that promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful; (2) any tobacco products and accessories; (3) any food or beverage that requires "Processing" as defined by the NYC Department of Health and Mental Hygiene.
- (C) Licensor makes no representation as to the legality of the use of the Licensed Area for the Licensee's intended purposes. In the event any use or proposed use is declared illegal by a court of competent jurisdiction, Licensee covenants and agrees that Licensor, its agents, officers or employees shall not be liable for any damages arising out of or related to such illegal use or proposed use.
- (D) Licensee shall comply with all applicable Federal, State and local laws, orders, ordinances, rules and regulations applicable to the Licensed Area and the operations to be conducted therein. Such laws shall include, without limitation, the Americans with

Disabilities Act of 1990, as amended, and any regulations promulgated pursuant to that Act.

- (E) Prior to the commencement of any operations at the Licensed Area, Licensee shall, at its sole cost and expense, obtain any and all necessary permits, licenses and/or other approvals required for Licensee to operate the business described in Article Nine (A) above from the appropriate governmental agencies, or any other entities having jurisdiction over the Licensed Area or the operations to be conducted therein. Licensee shall furnish photocopies of such permits, licenses and/or approvals to Licensor, prior to the commencement of business operations at the Licensed Area.
- (F) Licensee must obtain the prior written approval of the Department prior to entering into any marketing or sponsorship agreement. In the event that Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests.
- (G) Licensee is aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If the Licensee wants to sell merchandise that uses the City's trademarks, the Licensee shall purchase such merchandise from authorized licensees of the City. The sale of counterfeit or unlicensed merchandise at this concession shall result in the immediate termination of the License and seizure of the security deposit.
- (H) Licensee is aware that the City has developed New York City Beverage Vending Machines Standards ("Standards"), which are attached as Appendix B. The Licensee is required to comply with these Standards, which apply to all beverage vending machines located on City property, for the entire license term.
- (I) Licensee is aware that food standards for vending machines may be implemented by the City during the term of the License. In addition, the beverage and/or food standards may be changed during the term of the License. The Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of vending machines at all vending locations. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on the Licensee's revenue, upon submission to Licensor of documentation satisfactory to Licensor demonstrating such effect, Licensee and Licensor may amend the License as agreed upon between Licensor and Licensee. If Licensor and Licensee are unable to reach agreement on such amendment, Licensee may terminate the License upon 90 days prior written notice to Licensor.

ARTICLE TEN

MAINTENANCE AND REPAIRS

- (A) The Licensee shall, at its sole cost and expense, maintain the Licensed Area in its present condition or better; but nothing herein shall be construed to allow Licensee to make alterations, additions or installations to the Licensed Area without the express written permission of the Licensor.

- (B)** Licensee shall be responsible for ensuring that the Machines are in proper working order and fully stocked at all times. Licensee shall refund, in cash, any money that is lost in the Machines due to malfunction. Licensee shall conspicuously affix a plate with Licensee's name, address, and telephone number through which customers can submit complaints and requests for refunds, to each Machine installed. Upon receipt of a complaint from a customer concerning a malfunctioning Machine, Licensee shall: (1) register the name, address, and telephone number of the complainant; (2) verify the complaint with an on-site inspection within twenty-four hours of the complaint; and (3) refund the customer's money, if the complaint is verified. If the malfunctioning Machine cannot be repaired immediately, Licensee, at its sole cost and expense, shall either remove and replace it, or take it out of service. If Licensee chooses to take the machine out of service, the coin slot must be taped closed and a sign placed on the Machine indicating that the Machine is out of order. Under no circumstances shall a Machine be removed or remain out of order for more than five (5) business days. Licensee shall immediately report to the Department any Machine removed, taken out of service, or replaced.
- (C)** At all times during the term of this License, the Licensee shall, at Licensee's sole cost and expense, keep the Licensed Area and the area within ten (10) feet of the Licensed Area clean and free from graffiti and shall remove or cause the removal of any graffiti placed thereon during Licensee's occupancy of the License Area. Licensee shall clean the Licensed Area at least once a week. In addition, Licensee shall not place any racks, signs or other obstructions on the outside of the Licensed Area.
- (D)** The Licensee shall keep the Licensed Area in a proper, safe and sanitary manner in accordance with all applicable laws, orders, ordinances, rules and regulations and the operations conducted thereon and therein.
- (E)** Licensee shall, at its sole cost and expense, provide exterminating services in and about the Licensed Area as necessary.
- (F)** Licensee shall provide a trash receptacle proximate to each beverage or snack machine within the Licensed Area and shall provide separate receptacle(s) for recyclable materials. The receptacles shall be subject to the approval of Licensor. Licensee shall comply with all recycling regulations. All trash, garbage, rubbish and other refuse from the Licensed Area shall be collected by the Licensee and inserted into transparent plastic bags or other closed containers and shall, at Licensee's sole cost and expense, be lawfully removed or caused to be lawfully removed from the Licensed Area as provided in Article Twenty-Three below.
- (G)** Licensee shall not allow the emanation of loud noise, smoke, vapor or offensive odor from the Licensed Area.
- (H)** Licensee shall, at its sole cost and expense, perform all repairs to the Licensed Area, whether interior or exterior, ordinary or extraordinary. All repairs shall be of good quality and at least equal to the original work or installation and shall be performed in accordance with all applicable laws, ordinances, rules, regulations and codes. If, within ten (10) days after receipt of written notice to cure, repair or replace, Licensee fails to perform the necessary cure, repair or replacement, then Licensor may, but shall not be obligated to, perform such cure, repair or replacement at Licensee's expense and deduct

the cost of the cure, repair or replacement from the Security Deposit provided, however, that in the event of an emergency, as determined by Licensor, Licensor may perform such cure, repair or replacement immediately.

- (I) All property of Licensor, the City, or the owner of a building in which the Machines are installed that is damaged or altered in any way by the installation, removal, operation or maintenance of the Machines shall be promptly repaired or replaced by Licensee at its sole cost and expense to the complete satisfaction of Licensor.
- (J) Licensee shall not receive any abatement of the compensation charges, except at the sole discretion of Licensor, and Licensor shall not be liable for any inconvenience, annoyance, business interruption or injury arising from the need for or performance of any repair, restoration or replacement to the Licensed Area.
- (K) Licensee shall use its best efforts to minimize the extent to which the use of Department facilities is disrupted in connection with the operation, maintenance, and repair of the Machines.
- (L) Licensee shall use its best efforts to use energy efficient and environmentally friendly equipment, products and materials.

ARTICLE ELEVEN

NOISE CONTROL

Licensee shall comply with Section 24-216 of the Administrative Code of the City of New York. Licensee shall not permit or cause to be permitted on the Licensed Area devices and activities that are subject to the provisions of the New York City Noise Control Code to be operated, conducted, constructed or manufactured which cause a violation of the Noise Control Code.

Any such devices and activities shall incorporate the advances in the art of noise control that are developed, in accordance with regulations issued by the Commissioner of the Department of Environmental Protection of the City of New York or its successor, for the kind and level of noise emitted or produced by such devices and activities.

ARTICLE TWELVE

ALTERATIONS

- (A) The Licensee shall make no alterations, additions, installations or improvements that will affect the structural elements, the mechanical systems or the layout of the structure constituting the Licensed Area ("Major Alterations") without the prior written approval of the Licensor.
- (B) The Licensee shall make no alterations, additions, installations or improvements to the interior or exterior of the Licensed Area without the prior written approval of the Licensor.
- (C) Subject to the prior written approval of the Licensor, Licensee shall, at its sole cost and expense and before making any alterations, additions, installations or improvements, obtain all permits, approvals and certificates required by any governmental agency

having jurisdiction. If the proposed alteration, addition, installation or improvement is a Major Alteration, then Licensee shall promptly deliver duplicates of all such permits, approvals or certificates to Licensor. In addition, if requested by Licensor, Licensee shall provide to Licensor for review and approval copies of any plans and specifications prepared or caused to be prepared by the Licensee in connection with any alteration, addition, installation or improvement.

ARTICLE THIRTEEN

UTILITY CHARGES

- (A) Licensee shall pay all charges for sewer, water, gas, heat, electricity and telephone use at the Licensed Area, and shall procure at Licensee's own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Paragraph (A). There will be a separate charge for the monthly electrical charges for each machine. A schedule of the current monthly electrical charges consumed by similar snack and beverage machines in City buildings is attached for reference purposes as Appendix C.
- (B) Licensee shall provide the Department with a list of the Ampere Rating for each Machine. The electricity charges for each Machine are in addition to the monthly License Fees. The electricity charges will be determined by the Department based on the information provided by the Licensee.
- (C) Licensee shall be responsible for all necessary installation of electric and telephone connections.
- (D) Licensee will in no event accept any money, commission, premium, bonus or other valuable consideration from any person for the use or sale of utility services.

ARTICLE FOURTEEN

ADVERTISING AND SIGNAGE

- (A) During the entire term of this License, Licensee shall not place or allow the placement of any advertisement, notice or sign in or on the Licensed Area without the prior written permission of the Licensor. The following display or placement of advertising shall be strictly prohibited:
 - (1) Advertisements for tobacco or alcoholic beverages; and
 - (2) Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11.

In addition, advertising of product brands is strictly prohibited without the Department's prior approval.

Any such prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from the Department. Any and all signage is subject to the Department's approval. Licensee, upon twenty-four (24) hours' notice, shall remove any and all unauthorized advertising or signage placed in or on the Licensed Area. In the case of Licensee's failure to remove any such advertisement or signage, the Licensor may remove such advertisement or signage, and Licensee shall pay the cost of such removal.

- (B) The Licensor may require Licensee to place and affix, at Licensee's sole cost and expense, to any of the structures, appurtenances or any other part of the outside or inside of the Licensed Area, appropriate sign or signs, designating the Licensed Area as City-owned under the jurisdiction of the Department of Transportation. Licensee shall, at its own cost and expense, maintain such sign or signs.

ARTICLE FIFTEEN

ERECTION OF STRUCTURES

- (A) Licensee shall not place or permit the placement of any structures, signs or encumbrances of any kind, including but not limited to exterior tables or shelves, upon or adjacent to the Licensed Area, unless specifically authorized by this License. Licensee, upon twenty-four (24) hours' notice, shall remove any and all structures, signs or encumbrances that have been placed upon or adjacent to the Licensed Area without the consent of the Licensor. Licensor shall bear no liability, at any time, for any unauthorized structure, sign or encumbrance placed or permitted to be placed by the Licensee, whether within or outside of the Licensed Area.
- (B) In the case of Licensee's failure to remove any such structures, signs or encumbrances, the Licensor may remove such structures, signs or encumbrances, and Licensee shall pay the cost of such removal and of the storage of the material. Such structures, signs or encumbrances shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage. Alternatively, Licensor may, if Licensor so elects, treat such material as abandoned property and either sell it at a public auction after advertising it in the City Record, the proceeds thereof to be paid into the general fund, use or convert it for use by the Licensor or another city agency, or otherwise dispose of it.

ARTICLE SIXTEEN

[RESERVED]

ARTICLE SEVENTEEN

ASSIGNMENT

- (A) The Licensee shall not assign, transfer, convey or otherwise dispose of: this License; the Licensee's rights, obligations or duties under this License, in whole or in part; the Licensee's right to execute this License; or the Licensee's right, title or interest in this License, or any part thereof without the prior written consent of the Licensor. The Licensee shall not assign, by power of attorney or otherwise, any of the monies due or to

become due under this License without the prior written consent of the Licensor. Any such assignment, transfer, conveyance or other disposition without such consent shall be void.

- (B) Failure of the Licensee to obtain any required consent to any assignment shall be grounds for termination for cause, at the option of the Licensor. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to the Licensee, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City, except so much thereof as may be necessary to pay the Licensee's employees.
- (C) The provision of this clause shall not hinder, prevent or affect an assignment by the Licensee for the benefit of its creditors made pursuant to the laws of the State of New York.
- (D) This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

ARTICLE EIGHTEEN

SUBCONTRACTING

- (A) The Licensee agrees not to enter into any subcontracts for the performance of its obligations, in whole or in part, under this License without the prior written approval of the Licensor. Two (2) copies of each such proposed subcontract and a completed VENDEX questionnaire, if required, shall be submitted to the Licensor with the Licensee's written request for approval. All such subcontracts shall contain provisions specifying:
 - 1) that work performed by the subcontractor must be in accordance with the terms of the License between the Licensor and the Licensee,
 - 2) that nothing contained in such agreement shall impair the rights of the Licensor,
 - 3) that nothing contained herein, or under the License between the Licensor and the Licensee, shall create any contractual relation between the subcontractor and the Licensor, and
 - 4) that the subcontractor shall comply with the provisions set forth in Article Twenty-Two herein.
- (B) The Licensee agrees that it is fully responsible to the Licensor for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it.

ARTICLE NINETEEN

TAXES

Licensee agrees to pay all commercial rent taxes and assessments levied on the Licensed Area throughout the term of this License. All commercial rent taxes, assessments and the penalties thereon remaining unpaid shall be deemed additional compensation charges and Licensor shall have the right to enforce collection thereof in the same manner as though there were a default in payment of compensation charges hereunder.

ARTICLE TWENTY

EMINENT DOMAIN AND PUBLIC USE

In the event that the Licensed Area or any part thereof is required for a public use or condemned for a public use, whether by Licensor or any other agency of government, Licensee waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, Licensor may, in its sole discretion and upon request of Licensee, use reasonable efforts to provide Licensee with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to Licensee's business. In such case, the License term shall begin to run again as soon as the public work is completed and the Licensee is able to resume its business.

ARTICLE TWENTY-ONE

DEVELOPMENT PURPOSES

In the event that the Licensed Area is required by Licensor or any other agency of government for development purposes, construction, repairs or other work, Licensee waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. Licensee also agrees that this License shall terminate and Licensee shall vacate the Licensed Area upon twenty-five (25) days' written notice from Licensor.

ARTICLE TWENTY-TWO

SECURITY

Licensee shall, at its sole cost and expense, provide security to protect its own property.

Licensee, its subcontractors, and their employees shall comply with all security directives and operating procedures as set forth by the Licensor or its designee.

ARTICLE TWENTY-THREE

REFUSE REMOVAL

Licensee shall, at its sole cost and expense, arrange for removal, by a duly licensed private carter approved by Licensor, of all refuse, including but not limited to trash, boxes and trade waste. Evidence of Licensee's arrangements with such private carter, the terms of which shall reflect the adequacy of the service for the location covered, shall be submitted to Licensor on or before the commencement date of this License. Nothing in this provision shall prohibit Licensee from providing its own carter service, provided that: written application is made by Licensee to Licensor explaining in detail the manner in which such service shall be performed; the written consent of Licensor is obtained; and Licensee obtains any and all additional permits required by law.

ARTICLE TWENTY-FOUR

EXPENSES AND ADDITIONAL COMPENSATION CHARGES

If Licensee shall default in the performance of any covenant of any provision of this License, the Licensor may immediately, or at any time thereafter, without notice, perform the same for the account of Licensee, in the name or as agent of Licensee or otherwise. If at any time Licensor elects to pay any sum of money or perform any act which will require the payment of any sum of money due to Licensee's failure to comply with any provision hereof, or if Licensor is compelled to incur any expenses in relation to any action or proceeding instituted by reason of any default of Licensee, the sum or sums so paid by Licensor, with all interest, costs and damages, shall be deemed to be additional compensation charges ("Additional Compensation Charges"). The Additional Compensation Charge shall be due from Licensee to Licensor on the first day of the month with the next regularly scheduled monthly compensation fee payment following the incurring of such Additional Compensation Charges. Pursuant to Article 6, the Late Payment Charge will be added to any Additional Compensation Charge not paid on or before the 10th day the said Additional Compensation Charge becomes due.

ARTICLE TWENTY-FIVE

RIGHT TO AUDIT

- (A) The Department, the Comptroller and other duly authorized representatives of the City shall have the right, during business hours, to examine or audit the records, books of accounts and data of the Licensee, which relate to this License. Licensee shall also permit the inspection by the Department, the Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist the Department, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

- (B) The failure or refusal of the Licensee to permit the Department, the Comptroller and/or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle the Department to terminate this License.
- (C) Notwithstanding anything else to the contrary contained in this Agreement, the parties acknowledge and agree that the powers, duties, and obligations of the Comptroller of the City of New York, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised, or abridged in any way.

ARTICLE TWENTY-SIX

ACCEPTANCE OF PAYMENT NOT WAIVER

The acceptance of payments by Licensor for any period or periods after default of any of the terms, conditions or covenants herein contained to be performed, kept or observed by Licensee shall not be deemed to be a waiver of any right on the part of the Licensor to cancel this License for failure by Licensee to perform, keep or observe any of the terms, conditions or covenants of this License. No waiver of default by Licensor of any of the terms, conditions or covenants hereof to be performed, kept and observed by Licensee shall be construed to be or act as a waiver of any subsequent default of any of the terms, conditions or covenants herein contained to be performed, kept and observed by Licensee.

ARTICLE TWENTY-SEVEN

WAIVER OF LIABILITY

Licensor shall not be liable for any damage, injury or liability that may be sustained by Licensee or any other person whatsoever, or to their goods or chattels from any cause whatsoever, arising from or out of the occupancy of the Licensed Area, including but not limited to any damage by the elements, leakage, obstruction, other defect of water pipes, gas pipes or electric apparatus or other leakage in or about the Licensed Area or in and from any other part of the structure or structures of which the Licensed Area is part, or the condition of the Licensed Area or any part thereof. Licensee hereby expressly releases and discharges the Licensor, the City of New York, their officers, agents and employees from any and all demands, claims, actions and causes of action arising from any of the aforesaid.

ARTICLE TWENTY-EIGHT

NO CITY EMPLOYEE HAS INTEREST

Licensee warrants and represents that no officer, agent, employee or representative of the City of New York has received or will receive any consideration for the making of this License, and that no officer, agent, employee or representative of the City of New York has any interest or will have any interest, directly or indirectly, in this License or the proceeds thereof.

ARTICLE TWENTY-NINE

WAIVER OF TRIAL BY JURY

Licensee expressly waives (except for claims for personal injury or property damage) all right to trial by jury in any proceeding or action instituted by Licensor against Licensee or on any counterclaim interposed by Licensee with respect to the Licensed Area, and in any counterclaim or cause of action directly involving the terms, covenants or conditions of this License.

ARTICLE THIRTY

NOTICE

- (A) Every notice or communication to be served upon the Licensor or the Licensee shall be in writing and shall be sufficiently given if sent by Registered or Certified Mail, return receipt requested. Any notice to Licensor, with the exception of insurance-related notices, shall be addressed as follows:

**New York City
Department of Transportation
Division of Franchises, Concessions or Consents
Director of Concessions
55 Water Street, 9th Floor
New York, NY 10041**

- (B) Any notice to Licensee shall be addressed as follows:

**Name
Street Address
Town/City, State Zip Code**

- (C) The mailing of such notice or communication shall be equivalent to direct personal notice, and shall be deemed to have been given when mailed.
- (D) Either party may change its address as set forth herein by notice to the other in the manner provided for in Paragraph (A) above, provided that no notice of change of address shall be effective until the month following the month in which notice is given.

ARTICLE THIRTY-ONE

SEVERABILITY

In the event that any provision of this License is finally determined to be invalid or unenforceable by a court of competent jurisdiction, the invalidity of such portion of the License shall not affect the validity and enforceability of the remaining portions of this License.

ARTICLE THIRTY-TWO

NON-DISCRIMINATION

Licensee covenants and agrees not to discriminate on the basis of race, sex, age, color, creed, national origin, disability, marital status or sexual orientation in the use or occupancy of the Licensed Area or in any alterations, additions, installations or improvements erected on it. Licensee further covenants and agrees to state in all solicitations or advertisements for employees placed by or on behalf of the Licensee that all equally qualified applicants will be afforded equal employment opportunities without discrimination because of race, sex, age, color, creed, national origin, disability, marital status or sexual orientation.

ARTICLE THIRTY-THREE

BINDING ON HEIRS AND SUCCESSORS

Each and every one of the terms, covenants and provisions of this License shall inure to the benefit of and be binding upon the parties and, except as herein otherwise provided, their respective legal representatives, successors and assigns.

ARTICLE THIRTY-FOUR

UNCONDITIONAL RIGHT OF REVOCATION

- (A) Licensee expressly agrees that Licensor shall have the unconditional right to revoke this License, with or without cause, and terminate the term hereof, upon twenty-four (24) hours' written notice to Licensee, any provisions of this License to the contrary notwithstanding. In the event of such revocation and termination, Licensee shall remain liable for the due and full performance of all the terms, covenants and conditions of this License on the part of the Licensee to be performed up to the time of such revocation and termination.
- (B) Licensee understands and agrees that nothing, including, without limitation, the length of time this License has been in effect, the cost of any alterations, additions, installations or improvements, or any cost, expense or liability assumed by the Licensee, shall give rise to any greater rights than have been expressly granted Licensee hereunder, nor shall they affect Licensor's unconditional right of revocation. Furthermore, in the event of revocation, Licensor's sole liability to Licensee shall be to refund to Licensee, on a pro-rated basis, that portion of its annual compensation charge paid, representing the unexpired portion of the term less any charges owed by Licensee. In no event shall Licensee be entitled to any damages or any award for any revocation.
- (C) Any and all obligations and/or liabilities of Licensee under this License shall survive the expiration of the term of this License or other cancellation or termination thereof.

ARTICLE THIRTY-FIVE

HAZARDOUS CONDITIONS

Licensor shall direct the Licensee to vacate the Licensed Area if a hazardous condition, known to the Licensor, exists at the Licensed Area or on the adjacent property which endangers the life, health or safety of the occupants or users of the Licensed Area or of the general public. The Licensee shall not reoccupy the Licensed Area unless and until the Licensor so directs.

ARTICLE THIRTY-SIX

END OF TERM

- (A)** Upon the termination of this License by expiration or revocation, Licensee shall immediately quit and surrender to Licensor the Licensed Area vacant, broom clean and in good order and condition, ordinary wear and tear excepted. Licensee shall also immediately remove from the Licensed Area any and all items, inventory, movable fixtures and machinery owned by Licensee, and thereafter Licensee shall have no further recourse or claim pursuant to this License. Licensee shall be deemed to occupy the Licensed Area and shall be liable for all compensation charges until the Licensed Area is surrendered to Licensor in such condition as the Licensor finds acceptable.
- (B)** If Licensee's removal of its property causes damage to any portion of the Licensed Area and Licensee fails to repair such damage, then Licensee shall, upon demand by Licensor, reimburse the Licensor the cost and expense to repair and restore such damaged portion or portions of the Licensed Area. If the Licensee fails to reimburse Licensor within thirty (30) days of such demand, such amounts may be deducted from the Security Deposit.
- (C)** Any alteration, addition, installation or improvement to the Licensed Area which was made by the Licensee pursuant to the terms of this License, including paneling or decorations but not movable fixtures provided at the expense of Licensee, shall become the property of the Licensor, at its option, at the end of the License term and shall remain upon and be surrendered with the Licensed Area as part thereof at the termination of this License, without compensation to Licensee. Licensor may, however, by notice given to Licensee, elect to have Licensee remove any or all such alterations, additions, installations or improvements. Thereupon, Licensee shall, at its sole cost and expense, so remove, repair any damage caused by such removal and restore the Licensed Area to its proper condition to the satisfaction of the Licensor within thirty (30) days of such notice.
- (D)** Upon termination of this License, all property of the Licensee remaining in or on the Licensed Area after Licensee vacates the Licensed Area, or after the date by which Licensee is directed to vacate the Licensed Area, shall be deemed abandoned. At the election of Licensor such property shall be removed by an authorized officer or employee of any city agency or a police officer authorized to provide for the removal of such contents to a place of safety. Such contents shall be released to the owner or other person lawfully entitled to possession upon payment of the costs for removal and storage. If such contents are not claimed within thirty (30) days after their removal, they may be either sold at a public auction after having been advertised in the City Record, the proceeds thereof to be paid into the general fund, used or converted for use by the Licensor or another city agency or otherwise disposed of. In the event that any removal made pursuant to this subdivision shall include any perishable items, goods or food products, which cannot be retained in custody without such products becoming unwholesome, putrid, decomposed or unfit in any way, they may be delivered to the Commissioner of Health for disposition pursuant to the provisions of Section 17-323 of Administrative Code of the City of New York.

- (E) In the event the Licensed Area, at the end of the said term or other sooner termination thereof, is in a state of disrepair as determined by the Licensor, resulting from the failure of Licensee to repair and maintain the Licensed Area pursuant to the terms of this License, Licensee shall be required to sufficiently repair and place the Licensed Area in good order and condition as though all of such work had properly been done during such term. In the alternative, the Licensor may have such work performed and deduct the cost thereof from the Security Deposit; however, the Licensee shall remain liable for such costs in the event the amount of the Security Deposit is insufficient to cover them.

ARTICLE THIRTY-SEVEN

FAILURE TO GIVE POSSESSION

If Licensor fails to give Licensee possession of the Licensed Area on the commencement date, Licensee's sole remedy shall be to terminate this License and obtain a refund of any Security Deposit or prepaid compensation charge. Licensee shall not be entitled to monetary damages or other relief from Licensor by reason of such failure to give possession.

ARTICLE THIRTY-EIGHT

DAMAGES FOR FAILURE TO SURRENDER POSSESSION

- (A) If Licensee fails to surrender possession of the Licensed Area upon the last day of the term of the License, or upon sooner termination as provided herein, Licensee shall be liable for any and all damages including consequential, incidental, special and otherwise, including reasonable attorneys' fees, for any proceedings resulting therefrom. Licensor may offset such damages from the Security Deposit, which damages shall in no event be limited to the Security Deposit.
- (B) In addition, at the discretion of the Licensor, the annual compensation charges may be increased by up to fifty percent (50%) for any period during which the Licensed Area is not surrendered after the expiration or sooner termination of the License.

ARTICLE THIRTY-NINE

RIGHT OF ENTRY

- (A) In the event that this License shall be terminated as provided in this License or by notice of revocation or otherwise, or in the event that the Licensed Area shall be abandoned by Licensee or shall become vacant during said term, Licensor or its agents, servants or representatives, may immediately or any time thereafter reenter and take possession of the Licensed Area or such part thereof, and remove all persons, either by suitable action or proceeding at law, or in equity, or by force or otherwise, without being liable for any damage therefor. Any property remaining in the Licensed Area shall be deemed abandoned and removed pursuant to Article Thirty-Six (D).
- (B) Licensor, its agents, licensees, invitees, contractors and subcontractors may, but shall not be obligated to, enter the Licensed Area at any time without notice in case of an emergency as determined by Licensor, and at any reasonable hour and upon reasonable notice in a non-emergency situation for any reason, including without

limitation to examine the Licensed Area, to show it to potential Licensees or to perform, at Licensee's expense, any of Licensee's obligations under this License that Licensee has failed to perform. Licensee shall furnish unhindered access to Licensor and its agents, licensees, invitees, contractors and subcontractors to all areas of the Licensed Area. The exercise by Licensor of any of Licensor's rights pursuant to this Paragraph (B) shall not be deemed an eviction or disturbance of Licensee's use and possession of the Licensed Area.

ARTICLE FORTY

SURVIVAL OF RIGHTS

The provisions of this License relating to waiver of jury trial, as well as the right to re-entry upon termination, shall survive the expiration or sooner termination of this License.

ARTICLE FORTY-ONE

INSURANCE AND INDEMNIFICATION

(A) Indemnification

To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City, its employees and agents (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of the Licensee and/or its contractors) and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the Licensee and/or its contractors pursuant to or in connection with this License. Insofar as the facts or law relating to any claim would preclude an Indemnitee from being completely indemnified by the Licensee, the Indemnitee shall be partially indemnified by the Licensee to the fullest extent provided by law.

(B) Agreement to Insure

Beginning on or before the effective date of this License and continuing throughout the duration of this License, the Licensee shall procure and maintain policies of insurance satisfying the following requirements. All insurance shall comply with the General Requirements set forth in Section G below. Unless otherwise specified, there is no separate bid item for insurance costs.

(C) Commercial General Liability Insurance

1. The Licensee shall maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Five Million Dollars (\$5,000,000) aggregate, with a deductible no higher than Twenty-Five Thousand Dollars (\$25,000). This insurance shall protect the insureds from all claims of property damage and/or bodily injury, including death, that may arise from or relate to any operations under this License, including (but not limited to) the use or occupancy of the Licensed Area by Licensee, its agents, representatives, or employees. Coverage shall be at least as broad as that provided by Insurance Services Office ("ISO") Form CG 0001 and shall be "occurrence" based rather than "claims-made" based.

2. All Commercial General Liability insurance policies (whether primary, excess or umbrella) shall name the Licensee as Named Insured and the City, together with its officials and employees, as an Additional Insured with coverage at least as broad as ISO Form CG 20 26. The City's limits of coverage shall be the greater of (i) the limits required in Section C.1 or (ii) the limits applicable to the Licensee as Named Insured under all primary, excess and umbrella liability insurance policies.

3. All Commercial General Liability insurance policies shall be issued by companies that have an A.M. Best rating of at least A-VII or a Standard and Poor's rating of at least AA.

4. All Commercial General Liability insurance policies shall contain the following endorsement: "This policy may not be cancelled, terminated, modified or changed for any reason other than non-payment unless thirty (30) days prior written notice is sent by the Insurance Company to the Named Insured and the New York City Department of Transportation, attn: Executive Director, Franchises, Concessions & Consents, at 55 Water Street, New York, New York 10041. For non-payment, at least ten (10) days written notice must be provided."

(D) Workers' Compensation, Employer's Liability, and Disability Insurance

Licensee shall maintain Workers' Compensation, Employer's Liability, and Disability Insurance as required by the laws of the State of New York.

(E) Unemployment Insurance

To the extent required by law, the Licensee shall provide Unemployment Insurance for its employees.

(F) Automobile Liability Insurance

The Licensee shall maintain Commercial Automobile Liability Insurance covering all owned, non-owned, hired and borrowed vehicles to be used in connection with this License.

(G) General Requirements

1. All policies shall be procured from companies that may lawfully issue the required policy.

2. The Licensee shall be solely responsible for the payment of all premiums for all required policies and all deductibles to which such policies are subject, whether or not the City is an insured under the policy. With regard to the City, all insurance shall be primary (and non-contributing) to any insurance or self-insurance maintained by the City.

3. The Licensee shall file Certificate(s) of Insurance with Department of Transportation prior to the effective date of this License in a form acceptable to the Department of Transportation. Certificate(s) of Insurance shall certify the issuance and effectiveness of the Commercial General Liability policies and such other types of insurance as the Department of Transportation may require, and shall include the specified minimum limits and scope of coverage for the Additional Insured, if applicable. All Certificate(s) of Insurance shall be accompanied by a duly executed "Certification by Broker" in a form satisfactory to the Department of Transportation.

4. The Licensee shall not commence services under this License unless and until all required certificates are provided in accordance with this License have been submitted to and accepted by the Department of Transportation. Acceptance of a certificate does not excuse the Licensee from securing policies that fully comply with the requirements of this License or of any liability arising from its failure to do so.

5. Certificates of Insurance confirming renewals of insurance shall be submitted to Department of Transportation prior to the expiration date of coverage of policies required under this License. Such Certificates of Insurance shall comply with the requirements of Section G.3.

The Licensee shall provide the City with a copy of any Certificate of Insurance or any binder and/or policy required by this Article 41 upon the demand by Department of Transportation or the New York City Law Department.

ARTICLE FORTY-TWO

INVESTIGATION

- (A)** The parties to this License agree to cooperate fully and faithfully with any investigation, audit or inquiry, conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license, that is the subject of the investigation, audit or inquiry.
- (B)** **(1)** If any person who has been advised that his or her statement and any information from such statement will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract or license, entered into with the City, the State or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York, or
- (2)** If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract or license entered into with the City, the State or any political subdivision thereof or any local development corporation within the City, then;
- (C)** **(1)** The Commissioner or Agency Head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license shall convene a hearing, upon not less than five (5) days' written notice to the parties involved, to determine if any penalties shall attach for the failure of a person to testify.

- (2) If any non-governmental party to the hearing requests an adjournment, the Commissioner or Agency Head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license pending the final determination pursuant to Paragraph (E) below without the City incurring any penalty or damages for delay or otherwise.
- (D) The penalties which may attach after a final determination by the Commissioner or Agency Head may include but shall not exceed:
- (1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license, with or from the City; and/or
- (2) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses, that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; moneys lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.
- (E) The Commissioner or Agency Head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Paragraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:
- (1) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- (2) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- (3) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Paragraph (D) above, provided that the party or entity has given actual notice to the Commissioner or Agency Head upon the acquisition of the interest, or at the hearing called for in Paragraph (C) (1) above gives notice and proves that such interest was previously acquired. Under either

circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

- (F) (1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter or right.
- (2) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal, member or employee.
- (3) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association or person, that receives moneys, benefits, licenses, leases or permits from or through the City, or otherwise transacts business with the City.
- (4) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.
- (G) In addition to and notwithstanding any other provision of this License the Commissioner or Agency Head may in his or her sole discretion terminate this License upon not less than three (3) days' written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or for any purpose which may be related to the procurement or obtaining of this License by the Licensee, or affecting performance of this License.

ARTICLE FORTY-THREE

REPRESENTATIONS AND WARRANTIES

(A) **Procurement of License**

- (1) The Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. The Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. The Licensee makes such representations and warranties to induce the Licensor to enter into this License and the Licensor relies upon such representations and warranties in the execution hereof.
- (2) Licensee warrants and represents that no officer, agent, employee or representative of the City of New York has received or will receive any payment or other consideration for the making of this License, and that no officer, agent, employee or representative of the City of New York has any interest or will have any interest, directly or indirectly, in this License or the proceeds thereof.
- (3) For a breach or violation of such representations or warranties, the Licensor shall have the right to annul this License without liability, entitling the City to recover all monies paid hereunder. The Licensee shall not make claim for, or be entitled to recover, any sum or sums due under this License. This remedy, if effected, shall not constitute

the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or to take any other action provided for by law or pursuant to this License.

(B) Conflict of Interest

The Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. The Licensee further represents and warrants that in the performance of this License, no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Licensor, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his personal interest or the interest of any corporation, partnership or association in which he is directly or indirectly interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

(C) Fair Practices

The Licensee represents and warrants and certifies, under penalty of perjury, that to the best of his/her knowledge and belief:

(1) The compensation in this License has been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such compensation with any proposer or with any competitor;

(2) Unless otherwise required by law, the compensation which has been quoted in this License and on the proposal submitted by the Licensee has not been knowingly disclosed by the Licensee prior to the proposal opening, directly or indirectly, to any other proposer or to any competitor; and

The fact that the Licensee: (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same rates being proposed, does not constitute, without more, a disclosure within the meaning of Paragraph (2) above.

(3) No attempt has been made or will be made by the Licensee to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

(D) Employees

All experts, consultants or employees of the Licensee who are employed by the Licensee to perform work under this contract are neither employees of the City nor under contract to the City, and the Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of the Licensee or any person, firm, company, agency, association,

corporation or organization engaged by the Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant or agent, or for taxes of any nature, including but not limited to Unemployment Insurance, Workers' Compensation, disability benefits and Social Security, or, except as specifically stated in this License, to any person, firm or corporation.

ARTICLE FORTY-FOUR

NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

ARTICLE FORTY-FIVE

FORUM PROVISION, CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

- (A) This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.
- (B) The parties agree that any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this Agreement and intent, the Licensee agrees:
- (1) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by Registered Mail addressed to the Licensee at its address as set forth in this License, or to such other address as the Licensee may provide to the City in writing; and
 - (2) With respect to any action between the City and Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have to: (a) move to dismiss on grounds of forum non conveniens; (b) remove to Federal Court; and (c) move for a change of venue to a New York State Court outside New York County.
 - (3) With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.
 - (4) If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall

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

- (C) If any provision(s) of this Article Forty-Five is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE FORTY-SIX

NO VENDING MACHINES, AMUSEMENT GAME MACHINES, TELEPHONES

No amusement game machines, merchandise vending machines, coin operated or phone card activated telephones or concessions shall be installed in or on the Licensed Area without the written approval of the Licensor. Coin-operated or phone-card activated telephones will require the separate approval of the Department of Information, Technology and Telecommunications.

ARTICLE FORTY-SEVEN

PERMITS

- (A) The Licensee warrants and agrees that it and its employees and agents have or will obtain all the necessary permits and licenses required by any Federal, State or City agency having jurisdiction over any of the Licensee's operations under this License. The awarding of this License shall not excuse the Licensee from obtaining any necessary permits or licenses, and keeping same in full force and effect, during the entire term of this License.
- (B) Licensee shall comply with all applicable laws, rules, regulations and orders of Federal, State and City agencies regarding the use, occupancy and maintenance of the Licensed Area and with such other rules, regulations, orders, terms and conditions as may be set or required by Licensor.

ARTICLE FORTY-EIGHT

PRICE LIST

Licensee shall be responsible for maintaining a price list for all items sold and the dates of any price change during the term of this License. Such list shall be updated from time to time and shall be kept on file with the Licensor. All prices and any subsequent increases shall be subject to the approval of Licensor.

ARTICLE FORTY-NINE

CONDITION OF LICENSED AREA

Licensee accepts the Licensed Area "as is" and will not at any time make any claim that the Licensed Area or structures thereon are not, or at the time of the commencement of the term hereof were not, well painted and in suitable repair or condition for the uses and purposes of this License, nor will Licensee at any time make any claim for or by way of reduction of charge, or otherwise, for damages arising from or consequent upon any repairs that Licensor may

perform or cause to be performed pursuant to the provisions of this License or in consequence of the occupation of the Licensed Area by Licensor, or its agents or contractors. Neither Licensor nor any person acting on behalf of Licensor has made any representations or warranties to Licensee regarding the physical condition and state of repair of the Licensed Area or any other matter affecting this License.

ARTICLE FIFTY

REMEDIES IN CASE OF DEFAULT

- (A) In addition to and not in lieu of any other rights and remedies it may have under the provisions of this License or by operation of law, the Licensor may terminate this License and all rights granted hereunder to the Licensee upon twenty-five (25) days' written notice to the Licensee if:
- (1) The Licensee shall default in the payment of any of the amounts herein provided for and shall fail to pay the same following the said period of twenty-five (25) days, together with the additional charge of two percent (2%) from the due date to the date of the actual payment; or
 - (2) The Licensee shall default in the performance of any term, stipulation, covenant or condition of this License, and such default shall continue for a period of twenty-five (25) days after written notice and demand by the Licensor to cure said default; or
 - (3) The Licensee shall fail or neglect to pay promptly all taxes (Federal, State or Municipal) legally due and owing by it, and which relate to the business conducted hereunder, and shall continue to fail to pay for a period of twenty-five (25) days after notice and demand by the Licensor to the Licensee to pay said taxes; or
 - (4) The Licensee becomes insolvent.
- (B) The events mentioned above shall in each case be construed as a default on the part of the Licensee.

ARTICLE FIFTY-ONE

WAIVER OF COMPENSATION

- (A) Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Area, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.
- (B) Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this

License is terminated by Commissioner pursuant to the terms of this License Agreement.

ARTICLE FIFTY-TWO

INDEPENDENT STATUS OF LICENSEE

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

ARTICLE FIFTY-THREE

ALL LEGAL PROVISIONS DEEMED INCLUDED

Each and every provision of law required to be inserted in this License shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

ARTICLE FIFTY-FOUR

JUDICIAL INTERPRETATION

Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this Permit and that legal counsel was consulted by each responsible party before the execution of this Permit.

ARTICLE FIFTY-FIVE

MODIFICATION OF AGREEMENT

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

IN WITNESS WHEREOF, the parties hereunder have caused this License to be executed the day and year first above written.

LICENSOR:
DEPARTMENT OF TRANSPORTATION
OF THE CITY OF NEW YORK

By: _____
Anne J. Koenig
Executive Director

Accepted and agreed to:
LICENSEE:

By: _____
(Signature)

(Print Name of Signatory)

(Date)

Title: _____

(Date)

Approved as to form and
Certified as to legal authority

By: Sharon Cantor _____ (CS)
Acting Corporation Counsel

JUN 10 2010

(Date)

ACKNOWLEDGMENT BY CORPORATION

STATE OF NEW YORK)
) ss:
County of _____)

On this ____ day of _____, 20__ before me personally came _____, to me known, who being duly sworn, did depose and say that he/she resides at:

_____ of _____,

the corporation described in, and which executed the foregoing statement, that he/she knows the seal affixed to the said License is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he/she signed his/her name thereto by like order

Notary Public or Commissioner of Deeds

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APPENDIX A: LOCATIONS TO BE SERVED

BROOKLYN

1. 6080 Flatlands Avenue
2. 2900 Flatbush Avenue
3. 59 Adams Street
4. 448 Hamilton Avenue
5. 58th Street Yard (140 58th Street/First Avenue)
6. 130 Clay Street

BRONX

1. 3200 Conner Street
2. 2144 Webster Avenue, 1st Fl.
3. Mosholu Avenue & Broadway (inside Van Cortland Park)
4. 1400 Williamsbridge Road

MANHATTAN

1. 300 West 206th Street

QUEENS

1. 34-02 Queens Boulevard
2. 58-50 57th Road
3. 32-11 Harper Street
4. 66-26 Metropolitan Avenue (All machines shall accept bills, but not coins.
Change shall be in coins. Prices shall be the same as prices at other locations.)
5. 78-88 Park Drive East
6. 5-40 44th Drive

STATEN ISLAND

1. 1 Bay Street, 1st Fl.
2. 10 Glen Street
3. 5 Dubois Avenue

APPENDIX B: New York City Beverage Vending Machines Standards

The New York City Beverage Vending Machine Standards were enacted May of 2009, pursuant to Executive Order 122. There are separate standards for vending locations regularly used by adults (Adult Standards) and for vending locations regularly used by Children (Children's Standards).

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) Specifications regarding the product mix:

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

B) Specifications regarding product display placement:

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

C) Specifications regarding size:

¹ If drinking water is free and readily available in the same vicinity (must be on the same floor) as a beverage vending machine, Agencies can substitute seltzer for the mandatory 2 columns (or "buttons") of bottled water. Seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz and no artificial sweeteners.

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

For more information, please contact: nycfoodstandards@health.nyc.gov

D) Calorie labeling:

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

E) Promotional space:

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

F) Price:

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

For Vending Locations Regularly Used by Children age 18 and under

A) Specifications regarding the product mix:

- 1) Beverage vending machines can only include:
 - Water
Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
 - Unsweetened milk, 1% or nonfat only
 - Beverages with ≤ 25 calories per 8 oz
 - Carbonation and caffeine are allowed

2) Prohibited:

- Artificial sweeteners
- Other “natural” non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
- Artificial flavors and colors

3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:

- Should not be caffeinated
- Should be ≤ 10 calories per 8 oz

B) Calorie labeling:

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

(adapted from HC §81.50)

C) Promotional space:

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

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

Guidance for the Application of the Adult and Children’s Standards

Beverage vending machines within City Facilities* may serve an array of customers including: the general public; employees of the City of New York; participants in City programs for youth (school students, participants in afterschool programs); participants in City programs for adults; and others. The Children’s Standard will be applied based on the type of programming that takes place in the facility in which a machine is located.

Adult Standards

City Facilities* that cater to adults and do not have programming for children should follow the Adult Standards. Examples include office space occupied by City agencies, police precincts; Senior Centers and Shelter Facilities for single adults.

City Facilities* that are open to the general public but have no specific programming of any kind, such as gas stations, are subject to the Adult Standards.

Any portion of a youth facility which is intended for use exclusively by adults, and where youth are not generally permitted to enter, are subject to the Adult Standards. For example, teacher’s lounges within schools or the administrative offices of a community center are subject to the Adult Standards

Children's Standards

Any City Facility* where there is programming specifically for children, such as schools, community centers, park facilities, other spaces that regularly host Out-of-School Time (OST) programs, and athletic facilities that are used by school teams, are subject to the Children's Standards. For example, a community center that has programs for youth on weekday afternoons and adults in the evenings is subject to the Children's Standards.

Children age 18 and under Beverage Standards (High School) should be used by facilities that have programming only for high school aged children.

Children age 12 or under Beverage Standards should be used by facilities that have regular programming for children 12 and under. Facilities that serve children of all ages should use this standard. So, if a facility serves children age 6-18, it is subject to these standards.

*A City Facility is a property, building, or a discrete portion of a property or building, that is owned, rented, or otherwise controlled by the City or occupied by a City funded program.

APPENDIX C: ELECTRICAL CONSUMPTION

Current schedule of monthly charges for electricity consumed by vending machines in City buildings using electricity paid by the City

The rates below are for 110-120 volt single-phase services based on the name-plate rating in amperes. Adjustments must be made for other voltage characteristics (208V, 3 Phase, etc.). Charges increase linearly for current ratings greater than those in the schedule.

EFFECTIVE JANUARY 1, 2010

Monthly Charges in Dollars

<u>Nameplate Amperes Rating</u>	<i>Ice Cream Machine</i>	<i>Beverage Machine</i>	<i>Non-Refrigerated</i>
<i>Machine</i>			
1 amperes	5.56	4.69	6.22
2 amperes	11.11	9.39	12.44
3 amperes	16.67	14.08	18.65
4 amperes	22.22	18.78	24.87
5 amperes	27.78	23.47	31.09
6 amperes	33.33	28.17	37.31
7 amperes	38.89	32.86	43.52
8 amperes	44.44	37.56	49.74
9 amperes	50.00	42.25	55.96
10 amperes	55.55	46.94	62.18

EXHIBIT B: Vending Machine Locations to be Served

<i>Location</i>	<i>Number of Employees (+ visitors per week)</i>	<i>Contact Person</i>	<i>Phone Number</i>	<i>Type of Vending Machine(s) Required</i>
BRONX				
3200 Conner St.	80	Richard Cillo	718-231-8180	Snack
2144 Webster Ave, 1st Fl.	20 (+ 100)	Brian Connolly or Victor Vega	718-741-8243	Soft drink, snack
Mosholu Ave& B'way	32	Daniel Derosa	718-543-2371	Soft Drink
1400 Williamsbridge Rd	67 (+ 15)	Jackie Crawford	212-748-6675	Soft drink, snack
BROOKLYN				
6080 Flatlands Ave	130 (+25)	John Giaccio	718-251-6044	Soft drink, snack
448 Hamilton Ave	36 (+400)	David Sterman	718-369-4244	Soft drink, snack
58th St Yard (140 58th St/First Ave)	168	Lou DeSio	718-439-3621	Soft drink, snack
130 Clay St	81	Samuel Greisman	718-349-0452	Snack
2900 Flatbush	32	Bob Giallanzo Peter Gaucher	718-338-0057	Soft drink, snack
59 Adams Street	17	Frederick Doyle	718-643-4617	Soft drink, snack
MANHATTAN				
300 West 206 th St	60-70	Tom Whitehouse or Paul Schwartz	212-788-1710	Soft drink, snack
QUEENS				
34-02 Queens Blvd., LIC	373	Pat Larkin	718-786-6542	Soft drink(2), snack
58-50 57th Rd, Maspeth	304 (+150)	Patrick Ambrogio or Nick Robinson	718-894-2503	Soft drink (2)
32-11 Harper Street	177 (+100)	Nilsa Wynter-Moore	718-533-5747	Snack, Soft drink
66-26 Metropolitan Ave ¹	187	Theodore Collins	718-417-2109	Soft drink(2), snack
78-88 Park Drive East	62	Mike Cantamessa	718-591-7055	Soft drink
5-40 44 th Drive	30	Mike Panarese	718-784-4193	Soft drink, Snack
STATEN ISLAND				
1 Bay St, 1 st Fl	567	John White or Javonne Parker	718-876-6892	Soft drink, snack
10 Glen Street	40	Dominick Carolei	718-370-8741	Soft drink
5 Dubois Avenue	70	Pat McNiece	718-818-8145	Snack, Soft drink

¹ Machines at this location shall not accept coins (see Section 12.O of the RFB).

EXHIBIT C: ELECTRICAL CONSUMPTION

Current schedule of monthly charges for electricity consumed by vending machines in City buildings using electricity paid by the City

The rates below are for 110-120 volt single-phase services based on the name-plate rating in amperes. Adjustments must be made for other voltage characteristics (208V, 3 Phase, etc.). Charges increase linearly for current ratings greater than those in the schedule.

EFFECTIVE JANUARY 1, 2010

Monthly Charges in Dollars

<u>Nameplate Amperes Rating</u>	<i>Ice Cream Machine</i>	<i>Beverage Machine</i>	<i>Non-Refrigerated</i>
<i>Machine</i>			
1 amperes	5.56	4.69	6.22
2 amperes	11.11	9.39	12.44
3 amperes	16.67	14.08	18.65
4 amperes	22.22	18.78	24.87
5 amperes	27.78	23.47	31.09
6 amperes	33.33	28.17	37.31
7 amperes	38.89	32.86	43.52
8 amperes	44.44	37.56	49.74
9 amperes	50.00	42.25	55.96
10 amperes	55.55	46.94	62.18

EXHIBIT D: New York City Beverage Vending Machines Standards

The New York City Beverage Vending Machine Standards were enacted May of 2009, pursuant to Executive Order 122. There are separate standards for vending locations regularly used by adults (Adult Standards) and for vending locations regularly used by Children (Children's Standards).

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) Specifications regarding the product mix:

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

B) Specifications regarding product display placement:

- 1) Water must be placed in the position with the highest selling potential.
- 2) High Calorie beverages must be placed in the position with the lowest selling potential.
- 3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling

[†] If drinking water is free and readily available in the same vicinity (must be on the same floor) as a beverage vending machine, Agencies can substitute seltzer for the mandatory 2 columns (or "buttons") of bottled water. Seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz and no artificial sweeteners.

potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.

- 4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) Specifications regarding size:

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

For more information, please contact: nycfoodstandards@health.nyc.gov

D) Calorie labeling:

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

E) Promotional space:

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

F) Price:

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

For Vending Locations Regularly Used by Children age 18 and under

A) Specifications regarding the product mix:

1) Beverage vending machines can only include:

- Water

Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.

- Unsweetened milk, 1% or nonfat only
- Beverages with ≤ 25 calories per 8 oz
- Carbonation and caffeine are allowed

2) Prohibited:

- Artificial sweeteners
- Other “natural” non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
- Artificial flavors and colors

3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:

- Should not be caffeinated
- Should be ≤ 10 calories per 8 oz

B) Calorie labeling:

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

C) Promotional space:

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

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

Guidance for the Application of the Adult and Children's Standards

Beverage vending machines within City Facilities* may serve an array of customers including: the general public; employees of the City of New York; participants in City programs for youth (school students, participants in afterschool programs); participants in City programs for adults; and others. The Children's Standard will be applied based on the type of programming that takes place in the facility in which a machine is located.

Adult Standards

City Facilities* that cater to adults and do not have programming for children should follow the Adult Standards. Examples include office space occupied by City agencies, police precincts; Senior Centers and Shelter Facilities for single adults.

City Facilities* that are open to the general public but have no specific programming of any kind, such as gas stations, are subject to the Adult Standards.

Any portion of a youth facility which is intended for use exclusively by adults, and where youth are not generally permitted to enter, are subject to the Adult Standards. For example, teacher's lounges within schools or the administrative offices of a community center are subject to the Adult Standards

Children's Standards

Any City Facility* where there is programming specifically for children, such as schools, community centers, park facilities, other spaces that regularly host Out-of-School Time (OST) programs, and athletic facilities that are used by school teams, are subject to the Children's Standards. For example, a community center that has programs for youth on weekday afternoons and adults in the evenings is subject to the Children's Standards.

Children age 18 and under Beverage Standards (High School) should be used by facilities that have programming only for high school aged children.

Children age 12 or under Beverage Standards should be used by facilities that have regular programming for children 12 and under. Facilities that serve children of all ages should use this standard. So, if a facility serves children age 6-18, it is subject to these standards.

*A City Facility is a property, building, or a discrete portion of a property or building, that is owned, rented, or otherwise controlled by the City or occupied by a City funded program.

EXHIBIT E

BID PAGE

TOTAL OF BID

I (we) hereby Bid the following amount for the services required by and in accordance with the terms of this Request for Bids.

TOTAL BID FOR THE FIRST YEAR OF OPERATION

\$ _____
State Bid in Figures

I hereby certify that I received the ____ (number of addenda received, if any) Addenda to this RFB.

Check if applicable:

I certify that additional pages attached to the bid form are printed on recycled paper containing the minimum percentage of recovered fiber content as requested by the City in the RFB.

BIDDERS NAME _____

By _____
Signature of Individual Bidder, Partner or Corporate Owner

IF BIDDER IS A CORPORATION:

Attest:
(Corporate Seal) _____
Secretary of Corporate Bidder

Federal Taxpayer Identification Number

EXHIBIT F

BIDDER'S AFFIDAVIT WHERE THE BIDDER IS A CORPORATION

STATE OF New York)
) SS:
COUNTY OF)

_____ BEING DULY
SWORN SAYS I AM THE _____ OF THE ABOVE
NAMED CORPORATION WHOSE NAME IS SUBSCRIBED TO AND WHICH EXECUTED THE
FOREGOING BID. I RESIDE AT _____
_____;
I HAVE KNOWLEDGE OF THE SEVERAL MATTERS THEREIN STATED AND THEY ARE IN
ALL RESPECTS TRUE.

SIGNATURE OF THE PERSON WHO SIGNED THE BID

SUBSCRIBED AND SWORN BEFORE ME

THIS ____ DAY OF _____, 2010

NOTARY PUBLIC

EXHIBIT G:

BIDDER'S AFFIRMATION AND DECLARATION

BIDDER'S NAME: _____

THE ABOVE NAMED BIDDER AFFIRMS, DECLARES, AND CERTIFIES:

1. THAT SAID BIDDER IS OF LAWFUL AGE AND THE ONLY ONE INTERESTED IN THIS BID; THAT NO PERSON, FIRM OR CORPORATION OTHER THAN HEREIN ABOVE NAMED HAS ANY INTEREST IN THIS BID, OR IN THE LICENSE PROPOSED TO BE TAKEN.

2. 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 TO THEIR BEST KNOWLEDGE AND BELIEF:

(A) THE OCCUPANCY FEE IN THIS BID HAS BEEN ARRIVED AT INDEPENDENTLY WITHOUT COLLUSION, CONSULTATION, COMMUNICATION OR AGREEMENT FOR THE PURPOSE OF RESTRICTING COMPETITION, AS TO ANY MATTER RELATING TO SUCH OCCUPANCY FEE WITH ANY OTHER BIDDER OR WITH ANY COMPETITOR;

(B) UNLESS OTHERWISE REQUIRED BY LAW, THE OCCUPANCY FEE WHICH HAS BEEN QUOTED IN THIS BID HAS NOT BEEN KNOWINGLY DISCLOSED BY THE BIDDER, AND WILL NOT BE KNOWINGLY DISCLOSED BY THE BIDDER PRIOR TO THE OPENING, DIRECTLY OR INDIRECTLY, TO ANY OTHER BIDDER OR TO ANY COMPETITOR; AND

(C) NO ATTEMPT HAS BEEN MADE OR WILL BE MADE BY THE BIDDER TO INTRODUCE ANY OTHER PERSON, PARTNERSHIP, OR CORPORATION TO SUBMIT OR NOT TO SUBMIT A BID FOR THE PURPOSE OF RESTRICTING COMPETITION.

3. THAT NO COUNCIL PERSON OR OTHER OFFICER, EMPLOYEE OR PERSON, WHOSE SALARY IS PAYABLE IN WHOLE OR IN PART FROM THE CITY TREASURY, IS DIRECTLY OR INDIRECTLY INTERESTED IN THIS BID, TO THE AGREEMENT TO WHICH IT IS RELATED OR IN ANY OTHER PROFITS THEREOF.

4. THAT SAID BIDDER IS NOT IN ARREARS TO THE CITY OF NEW YORK UPON ANY DEBT OR CONTRACT, AND IS NOT A DEFAULTER, AS SURETY OR OTHERWISE, UPON ANY OBLIGATION TO THE CITY OF NEW YORK, AND HAS NOT BEEN DECLARED NOT RESPONSIBLE, NOR DISQUALIFIED BY ANY AGENCY OF THE CITY OF NEW YORK OR THE STATE OF NEW YORK, NOR IS THERE ANY PROCEEDING PENDING RELATING TO THE RESPONSIBILITY OR QUALIFICATION OF THE BIDDER TO RECEIVE PUBLIC CONTRACTS, EXCEPT AS IS INDICATED IN AN ATTACHMENT HERETO.

5. THAT SAID BIDDER HAS VISITED AND EXAMINED THE SITE, OR HAD AN OPPORTUNITY TO VISIT THE SITE.

6. THAT SAID BIDDER WILL PAY TO EACH EMPLOYEE NOT LESS THAN THE MINIMUM WAGES FIXED BY FEDERAL LAW AND REQUIREMENTS.

7. THAT SAID BIDDER HAS NOT REFUSED TO TESTIFY BEFORE A GRAND JURY CONCERNING ANY TRANSACTION WITH THE STATE OR ANY POLITICAL SUBDIVISION.

BIDDER: _____

SIGNATURE OF PARTNER OR CORPORATE OFFICER

ATTEST:
(CORPORATE SEAL)

SECRETARY OF CORPORATE BIDDER

EXHIBIT H: CONCESSION QUESTIONNAIRE

TYPE OR PRINT CLEARLY

Name of entity placing bid

Check one: *Individual* *Partnership* *Corporation*

Business address

City / Town

State

Zip Code

_____-_____-_____
Business telephone

_____-_____-_____
Fax number

Tax Payer I.D. Number

Contact person

_____-_____-_____
Telephone number

_____-_____-_____
Cell telephone

IF BIDDER IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:

Home address

City / Town

State

Zip code

_____-_____-_____
Home telephone

_____-_____-_____
Cell telephone

IF PARTNERSHIP, COMPLETE THE FOLLOWING:

<i>Name(s) of Partner(s):</i>	<i>Address(es) of Partner(s):</i>

IF CORPORATION, COMPLETE THE FOLLOWING:

Place of incorporation

Name and address of President

Name and address of Secretary

Name and address of Treasurer

ALL BIDDERS MUST COMPLETE THE FOLLOWING:

1. List all permits, licenses, leases, etc. issued by the City of New York or any City or State agency, which are held by you or any business entity that you are affiliated with. Include type, identifying number and expiration date:

2. State your experience in operating vending machines:

3. List all similar businesses operated by Bidder currently and in the last five (5) years. Include business addresses and briefly describe type of operation.

4. If an individual, list your employment for the past five (5) years:

<i>Start / End date</i>	<i>Company and address</i>	<i>Telephone</i>	<i>Position</i>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

5. List at least three (3) Business references:

<i>Name</i>	<i>Address</i>	<i>Telephone</i>
_____	_____	_____
_____	_____	_____
_____	_____	_____

6. Description of all improvements proposed and/or equipment to be purchased and the estimated cost:

<i>Description</i>	<i>Cost</i>
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____

7. Method of financing to be used, if any:

ONE YEAR BUSINESS PLAN

A. ITEMS TO BE SOLD

Item	Price	Item	Price
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____
_____	\$ _____	_____	\$ _____

B. ESTIMATED START UP COSTS

1. Legal costs	\$ _____
2. Architectural costs	\$ _____
3. Licensing fees	\$ _____
4. Incorporation fees	\$ _____
5. Occupancy charges during construction	\$ _____
6. Construction costs	\$ _____
7. Fixtures	\$ _____
8. Inventory	\$ _____
9. Consulting fees	\$ _____
10. Franchise fees	\$ _____
11. Miscellaneous fees	\$ _____
12. Total start up costs (Add lines 1 – 11)	\$ _____

C.	PROJECTED FIRST YEAR GROSS REVENUE	\$ _____
D.	PROJECTED FIRST YEAR EXPENSES	
	1. Wages, salaries	\$ _____
	2. Occupancy charges, rent	\$ _____
	3. Telephone	\$ _____
	4. Gas	\$ _____
	5. Electricity	\$ _____
	6. Interest on loans	\$ _____
	7. Advertising	\$ _____
	8. Postage	\$ _____
	9. Travel	\$ _____
	10. Vehicle	\$ _____
	11. Payroll taxes	\$ _____
	12. Other taxes	\$ _____
	13. Supplies	\$ _____
	14. Legal fees	\$ _____
	15. Accounting fees	\$ _____
	16. Insurance	\$ _____
	17. Repairs	\$ _____
	18. Equipment rental	\$ _____
	19. Depreciation	\$ _____
	20. Cost of Goods to be Sold	\$ _____
	21. Other _____	\$ _____
	22. Total Expenses (Add lines 1 –21)	\$ _____
E.	ESTIMATED FIRST YEAR PROFITS OR LOSSES (Line A minus Line 22)	\$ _____

I hereby certify that all statements made in this questionnaire are true and correct to the best of my knowledge.

Signature

Date