

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Economic Development Corporation (“NYCEDC”), on behalf of the New York City Department of Small Business Services (“DSBS”), to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for DSBS to amend the concession agreement between the City of New York, acting by and through DSBS, and FirstFlight Heliports, LLC d/b/a Saker Aviation Services (“Operator”) for the operation of the Downtown Manhattan Heliport located at 6 E. River Piers, New York, New York, in the borough of Manhattan. The amendment (i) extends the expiration date of the concession agreement through April 30, 2021 with two (2) one (1) year renewal options exercisable at the sole discretion of the City and (ii) establishes new minimum annual guarantee amounts for (a) Years 8, 9, and 10 and (b) the extended term of the concession agreement. Operator will pay the following minimum annual guarantee amounts: Year 8: \$1,148,511; Year 9: \$814,855.02; Year 10: \$848,098.00; Extended Operating Year 1: \$882,870.02; Extended Operating Year 2: \$919,068.00; Extended Operating Year 3: \$956,749.00; Option Year 1: \$995,976.00; Option Year 2: \$1,036,811.00. The amended concession agreement will also (i) reduce the maximum number of tourist flights allowed, (ii) require the cessation of tourist flights over Governors Island and Staten Island, (iii) require air quality monitoring and (iv) require Operator to actively research additional mitigation of noise and emissions and implement any such technology as it becomes commercially feasible.

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

July 13, 2016

Date: _____

Signed: _____

Title: Director of the Mayor’s Office of Contract Services

intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.

The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved amended concession agreement on / /

Award is a major concession. YES NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

CPC approved on __/__/__ City Council approved on __/__/__ or N/A

AUTHORIZED AGENCY STAFF

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

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- The concession was approved by the FCRC on __/__/__.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name _____ **Title** _____

Signature _____ **Date** __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

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

Signature _____ **Date** __/__/__
City Chief Procurement Officer

RECOMMENDATION FOR AMENDMENT OF CONCESSION AGREEMENT MEMORANDUM:

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Economic Development Corporation on behalf of the New York City Department of Small Business Services ("DSBS") is seeking Franchise and Concession Review Committee ("FCRC") approval to use a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), for DSBS to amend its concession agreement with First Flight Heliports, LLC d/b/a Saker Aviation Services ("Saker") for the operation of the Downtown Manhattan Heliport located at 6 E. River Piers, New York, New York.

***Instructions:** Provide all information requested below; check all applicable boxes.*

A. SELECTION PROCEDURE

Sole Source

Other Describe: NYCEDC is seeking FCRC approval to use a different procedure, pursuant to Section 1-16 of Concession Rules, for DSBS to amend its concession agreement with Saker for the operation of the Downtown Manhattan Heliport located at 6 E. River Piers, New York, New York

B. NEGOTIATIONS

***Instructions:** Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.*

The existing concession agreement with Saker was entered into on July 23, 2008 and will expire on October 31, 2018. Complaints of noise and concerns over perceived air quality issues have been raised with regard to the Heliport. Requests have been made to eliminate the helicopter tourism flights originating from the Heliport but concerns have been raised by the industry that elimination would have an adverse effect on jobs. In an effort to reach a compromise, NYCEDC, DSBS and Saker, have come to an agreement whereby Saker has agreed to the following:

1. Cessation of Sunday Tourist Flights/Cap on Saturday Flights
2. Cessation of Flights Over Governors Island and Cessation of Flights over Staten Island
3. 50% Reduction in Tourist Flight Operations by January 1, 2017
4. Air Quality Monitoring
5. Additional Mitigation

In the course of negotiations to reduce the number of tourism flights, Saker requested that the concession agreement be amended to extend the term. Subject to compliance with all applicable laws, rules and regulations, including approval by the FCRC, NYCEDC, on behalf of DSBS, negotiated an amendment extending the term of the existing concession agreement through April 30, 2021 with

two one year renewal options exercisable at the sole discretion of the City, and established new minimum annual guarantee ("MAG") amounts payable for the extended years of the term. NYCEDC, on behalf of DSBS, also negotiated an amendment to reduce the MAG in the existing agreement for the remainder of the term (Years 8, 9, and 10), corresponding to reduction in permitted levels of activity and additional monitoring. The MAG associated with the remainder of the term, extended term, and the option years are as follows:

Year 8: \$1,148,511

Year 9: \$814,855.02

Year 10: \$848,098

First year of the extended term: \$882,870.02

Second year of the extended term: \$919,068

Third year of the extended term: \$956,749

for the first option year: \$995,976

for the second option year: \$1,036,811

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

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

The Heliport is currently operated by Saker pursuant to a concession agreement with the City. The concession agreement was entered into on July 23, 2008 and will expire on October 31, 2018. Complaints of noise and concerns over perceived air quality issues have been raised with regard to the Heliport. Requests have been made to eliminate the helicopter tourism flights originating from the Heliport but concerns have been raised by the industry that elimination would have an adverse effect on jobs. Such elimination would also significantly reduce revenue for the City. In an effort to reach a compromise, NYCEDC, DSBS and Saker have come to an agreement whereby the following would occur:

1. Cessation of Sunday Tourist Flights/Cap on Saturday Flights
2. Cessation of Flights over Governors Island and Cessation of Flights over Staten Island
3. 50% Reduction in Tourist Flight Operations by January 1, 2017
4. Air Quality Monitoring
5. Additional Mitigation

However, Saker expressed that it only makes economic sense for it to agree to the above concessions and continued payments to the City, albeit reduced in accordance with the reduction of flights, if the concession agreement is extended at least until April 30, 2021 with two one year renewal options exercisable at the sole discretion of the City. If such an extension is approved, Saker will pay MAG amounts for the extended years of the term as set forth above.

DSBS believes that an amendment to the existing concession agreement is in the best interest of the City because there are no other viable options at this time to address the noise complaints and risk of adverse effects on jobs in the industry. DSBS also believes that if flight tourism is completely eliminated from the Heliport, an industry will have been wiped out in the City affecting livelihoods and families across the City. Further, it will drive the industry

to other locations such as New Jersey where the City would have limited control over flight regulations. Last, the City would lose significant revenues.

For these reasons, DSBS believes it is in the City's best interest to request FCRC approval to amend its existing concession agreement with Saker for the operation of the Heliport.

D. **PUBLIC HEARING** N/A – Subject award **NOT** a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 6/24/2016, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 6/24/2016, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by 6/24/2016.

- Daily News, a NYC citywide newspaper on 7/7/16 and 7/8/16
- El Dario, a NYC citywide newspaper on 7/7/16 and 7/8/16

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by ___/___/___.

- _____, a NYC local newspaper published in the affected borough(s) on ___/___/___ and ___/___/___.
- _____, a NYC local newspaper published in the affected borough(s) on ___/___/___ and ___/___/___.

2. Public Hearing Date, Exception to Public Hearing Requirement

A Public Hearing was conducted on ___/___/___.

OR

The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive

any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.



New York City Economic Development Corporation

MEMORANDUM

TO: Hon. Gale A. Brewer, President of the Borough of Manhattan
Mr. Noah Pfefferblit, District Manager, Manhattan Community Board 1

FROM: Oscar Roman, NYCEDC, Project Manager

SUBJECT: Notice of Joint Public Hearing, July 11, 2016: re Amendment of Concession Agreement between the City of New York and FirstFlight Heliports, LLC d/b/a Saker Aviation Services for the operation of the Downtown Heliport located at 6 E. River Piers, New York, New York.

DATE: **June 24, 2016**

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Small Business Services to be held on Monday, July 11, 2016 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

AMENDMENT of the concession agreement between the New York City Department of Small Business Services and FirstFlight Heliports, LLC d/b/a Saker Aviation Services (“Operator”) for the operation of the Downtown Heliport located at 6 E. River Piers, New York, New York. The amendment extends the expiration date of the concession agreement through April 30, 2021 with two (2) one (1) year renewal options exercisable at the sole discretion of the City and establishes new minimum annual guarantee amounts for Year 9, Year 10 and the extended term of the concession agreement. Operator will pay the following minimum annual guarantee amounts:

Year 9:	\$814,855;
Year 10:	\$848,098;
Extended Operating Year 1:	\$882,870.02;
Extended Operating Year 2:	\$919,068.00;
Extended Operating Year 3:	\$956,749.00;
Option Year 1:	\$995,976.00;
Option Year 2:	\$1,036,811.00.

The amended concession agreement will also (i) reduce the maximum number of tourist flights allowed, (ii) require the cessation of tourist flights over land, (iii) require air quality monitoring and (iv) require Operator to actively research additional mitigation of noise and emissions and implement any such technology as it becomes commercially feasible.

A draft copy of the amended concession agreement may be reviewed or obtained at no cost, commencing Wednesday, June 29, 2016, through July 11, 2016, between the hours of 10 a.m. and 5 p.m., excluding weekends and holidays, at the New York City Economic Development Corporation, located at 110 William Street, 6th floor, New York, New York 10018.

Individuals requesting sign language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

AMENDMENT OF CONCESSION AGREEMENT

between

**THE CITY OF NEW YORK ACTING BY AND THROUGH ITS DEPARTMENT OF
SMALL BUSINESS SERVICES**

and

**FIRSTFLIGHT HELIPORTS, LLC D/B/A SAKER AVIATION SERVICES, as successor
in interest to Saker Aviation Services, Inc.**

THIS AMENDMENT OF CONCESSION AGREEMENT (this “Amendment”) is made as of the _____th day of _____, 2016, by and between **THE CITY OF NEW YORK**, acting by and through its Department of Small Business Services, (the “City”), having an address at 110 William Street, 7th Floor, New York, New York 10038 and **FIRSTFLIGHT HELIPORTS, LLC D/B/A SAKER AVIATION SERVICES, as successor in interest to Saker Aviation Services, Inc.**, a Nevada corporation, having an office at 20 South Street, Pier 6, East River, New York, New York 10004 (the “Operator”).

W I T N E S S E T H

WHEREAS, pursuant to a Concession Agreement dated as of July 23, 2008 by and between the City and FirstFlight, Inc. (the “Concession Agreement” or “Agreement”), and a Consent and Agreement dated September 29, 2009 by and between the City and FirstFlight Heliports, LLC, a wholly owned subsidiary of Saker Aviation Services, Inc. f/k/a FirstFlight, Inc. and FirstFlight Heliports, LLC d/b/a Saker Aviation Services, which agreements were amended by a further agreement dated February 2, 2016 (the “February Agreement”) (collectively, the “Original Concession Agreement” or “Original Agreement”), Operator is the fixed base operator of the Downtown Manhattan Heliport (“DMH”) which consists of 6,300 total square feet of terminal space and 71,900 square feet of barge and pier space together with all buildings and improvements as generally described in Exhibit “A” of the Concession Agreement; and

WHEREAS, pursuant to the Amended and Restated Maritime Contract between the City and the New York City Economic Development Corporation (“NYCEDC”), the City has retained NYCEDC to engage in, inter alia, various activities intended to promote the economic development of the City’s waterfront property and related transportation facilities, including the operation of DMH, and in that capacity, is the Agreement Administrator of the Original Concession Agreement; and

WHEREAS, the City and Operator wish to further amend the Original Concession Agreement as set forth below to extend the term and adjust the Minimum Annual Guarantee, the use and other ancillary items; and

WHEREAS, the Franchise and Concession Review Committee ("FCRC"), has authorized NYCEDC, on behalf of the New York City Department of Small Business Services, to use a different procedure to enter into this Amendment.

NOW, THEREFORE, for and in consideration of the mutual covenants herein contained and other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, the City and the Operator hereby agree as follows:

1. Definitions. All capitalized terms used herein shall have the meanings ascribed to them in the Original Concession Agreement, unless otherwise specifically set forth herein to the contrary. The following definitions shall be added to Section 1.01 of the Agreement: **"Tourist Flight"** or **"Tourist Flight Operations"** means an aircraft first taking off from DMH, then flying along the Authorized Routes, and then landing back at DMH.
2. Effective Date. This Amendment is effective upon written notice to the Operator from the Agreement Administrator of registration with the Comptroller (the "Effective Date").
3. Modification of Concession Agreement. The Original Concession Agreement is hereby modified as follows:
 - a. As of the Effective Date, Section 2.01 of the Concession Agreement is deleted in its entirety and replaced with the following:

Section 2.01. Term. The initial term of this Agreement ("Initial Term") shall commence on the date set forth in a written notice to proceed from Agreement Administrator ("Commencement Date") and continue until midnight on April 30, 2021 unless sooner terminated in accordance with the provisions hereof (such date is hereinafter referred to as the "Expiration Date"). Six (6) months prior to the expiration of the Agreement, the City, at its sole discretion, may offer Operator an option to renew the Agreement for a one year period (the "First Renewal Term") upon the same terms and conditions applicable during the initial term except as to the Minimum Annual Guarantee, which, in the event of any such renewal, shall be as provided in Section 3.01(b) hereof, provided that (1) the Agreement shall then be in full force and effect in accordance with its terms, (2) there shall not then exist any uncured default hereunder at the time of exercise of the option or at the beginning of any extension term and (3) Operator shall accept the option in writing within ten (10) days of notice. Six (6) months prior to the expiration of the renewal term, the City, at its sole discretion, may offer Operator another option to renew the Agreement for an additional one year period (the "Second Renewal Term," and together with the First Renewal Term, the "Renewal Term") upon the same terms and conditions applicable during the initial term except as to the Minimum Annual Guarantee, which, in the event of any such renewal, shall be as provided in Section 3.01(b) hereof, provided that (1) this Agreement shall then be in full force and effect in accordance with its terms, (2) there shall not then exist any uncured default hereunder at the time of exercise of the option or at the beginning of any extension term and (3) Operator shall accept the option in writing within ten (10) days of notice. In the event that Operator fails to timely notify Agreement Administrator in writing of its acceptance of the First Renewal Term or the Second Renewal Term, as applicable, in the manner provided herein, then Operator shall have waived or

forfeited its right to extend this Agreement for any renewal term and this Amendment shall expire on the Expiration Date. (The Initial Term and the Renewal Terms shall be collectively referred to as the "Term")

- b. As of the Effective Date, the following paragraph (x) is added to Section 2.02(a) of the Concession Agreement:
- (x) In addition to any other reporting and recordkeeping required under the Agreement, commencing July 1, 2016, and again each month thereafter, within fifteen (15) calendar days of the first day of the month for the duration of the Term, the Operator shall cause to be prepared and delivered a monthly report to The New York City Council ("City Council") at City Hall, New York, NY 10007, Attn.: Chief of Staff with a copy to NYCEDC at 110 William Street, New York, NY 10038, Attn.: Senior Director of Aviation, detailing (a) the number of Tourist Flight Operations conducted out of the DMH for the previous calendar month, (b) a comparison to the relevant monthly maximum number of Tourist Flight Operations set forth in Section 2.03 and (c) the number and locations of any deviations of Tourist Flight Operations from the Authorized Routes which result in flights over land or piers, including land or piers on Governors Island and Staten Island. Agreement Administrator shall commission and the Operator shall pay, within reason, for reports of compliance, to be prepared by an impartial party.
- c. As of the Effective Date, the following paragraph (xi) is added to Section 2.02(a) of the Concession Agreement:
- (xi) establish and maintain a system approved by Agreement Administrator to monitor air quality in the vicinity of DMH for the duration of the Term. All expenses associated with such monitoring system are to be borne by the Operator. The Operator shall deliver monthly readings to the City Council with a copy to Agreement Administrator at the following addresses: (1) to the City Council at New York City Council, City Hall, New York, NY 10007, Attn.: Chief of Staff; (2) to Agreement Administrator at NYCEDC, 110 William Street, New York, NY 10038, Attn.: Senior Director of Aviation.
- d. As of the Effective Date, the following paragraph (xii) is added to Section 2.02(a) of the Concession Agreement:
- (xii) actively research available technologies to further mitigate helicopter noise, reduce emissions, and promote fuel efficiency, and implement any such technology as it becomes commercially feasible.
- e. As of the Effective Date, the following paragraph (xiii) is added to Section 2.02(a) of the Concession Agreement:
- (xiii) ensure that all flights for tour purposes leaving from or coming into DMH (i) shall not undertake any routes other than those set forth in the 2010 Helicopter

Sightseeing Plan (attached hereto as Exhibit M), as modified to remove the Yankee Stadium routing and as may be further modified from time to time, (ii) shall not fly over Staten Island while conducting Tourist Flight Operations originating out of the DMH, (iii) shall not fly over Governors Island before the Tourist Flight Operations begin and after the Tourist Flight Operations end even if transitioning to and from DMH, and (iv) provided it is for tour purposes leaving from or coming into DMH, shall make best efforts, working in coordination with the air traffic control towers at Newark International Airport and LaGuardia, to fly at maximum altitudes permitted under FAA rules while en route to DMH from facilities outside New York City (the “Authorized Routes”).

- f. As of the Effective Date, a new Exhibit L is added to the Concession Agreement in the form attached to this Amendment as Exhibit 2.
- g. As of the Effective Date, the following paragraph (xiv) is added to Section 2.02(a) of the Concession Agreement:

(xiv) make best efforts to prevent helicopters at DMH from idling for a period greater than ten minutes.

- h. As of the Effective Date, the fifth paragraph of Section 2.03 of the Concession Agreement is deleted in its entirety and replaced with the following, including Exhibit 3 attached hereto:

The City or Agreement Administrator may preclude certain types of helicopters during certain hours of operation. Operator acknowledges that the hours of operation of DMH for take-offs and landings shall be limited as follows unless otherwise modified by the City:

- (i) Monday through Friday to 7:00 a.m. to 10:00 p.m.; Tourist Flights from 9:00 a.m. to 7:00 p.m. only
- (ii) Saturdays from 7:00 a.m. to 7:00 p.m.; Tourist Flights from 9:00 a.m. to 7:00 p.m. only
- (iii) Sundays from 7:00 a.m. to 5:00 p.m.; no Tourist Flights

Notwithstanding the above, DMH may be used for emergency landings and take-offs at any time. Emergency landings and take-off shall be those (i) used by any emergency service of any level of government (e.g., police, fire, military), (ii) used for time-critical medical treatment purposes, (iii) used in addressing any conditions where a threat to human life or safety or damage to property is present or imminent, or (iv) by operators experiencing in-flight mechanical difficulties.

Commencing on June 1, 2016, Tourist Flight Operations shall not exceed three hundred Tourist Flight Operations on any Saturday.

The total number of Tourist Flight Operations existing prior to June 1, 2016 shall be reduced by Fifty Percent (50%) in accordance with the following implementation schedule:

- a. Commencing June 1, 2016, the Operator shall implement a Twenty Percent (20%) reduction in the number of Tourist Flight Operations out of the DMH on a month to month basis based on peak operational levels as set forth in Row A of the spreadsheet attached hereto as Exhibit L and incorporated herein by reference, effectively ensuring that the number of such operations do not exceed Eighty Percent (80%) of the peak operational levels on a monthly basis thereafter for the duration of the Term.
- b. Commencing October 1, 2016, the Operator shall again reduce total number of Tourist Flight Operations out of the DMH on a monthly basis by a number equal to Twenty Percent (20%) of the peak operational levels set forth in Row A of Exhibit L, ensuring that the number of such operations do not exceed Sixty Percent (60%) of the peak operational levels set forth in Row A of Exhibit L on a monthly basis thereafter for the duration of the Term.
- c. The Operator agrees that as of January 1, 2017, the Operator shall again reduce the total number of Tourist Flight Operations out of the DMH on a monthly basis by a number equal to Ten Percent (10%) of the peak operational levels set forth in Row A of Exhibit L, ensuring that the number of Tourist Flight Operations do not exceed Fifty Percent (50%) of the peak operational levels set forth in Row A of Exhibit L on a monthly basis thereafter for the duration of the Term. The parties to this Agreement explicitly acknowledge that the number of operations represented in Row B of Exhibit L represent a Fifty Percent (50%) reduction in peak operational levels of Tourist Flight Operations conducted out of the DMH on a month-to-month basis during calendar year 2015.

The City reserves the right to reduce the maximum number of Tourist Flight Operations by an additional 50% for any or all of the remainder of the Term if:

- (i) Tourist Flight Operations in any given month exceed the level for that month set forth in this Section; or
- (ii) on more than five occasions, other than in cases of emergency, Tourist Flight Operations cross over land or piers, including those lands or piers on Governors Island or Staten Island, and are documented as having done so by an independent professional commissioned by the Agreement Administrator and paid for by the Fixed Base Operator.

Upon each additional occurrence of the facts set forth in subparagraph (i) or (ii) above, pursuant to the terms herein, the City shall have the right to reduce the then maximum number of Tourist Flight Operations by an additional 50%.

- i. As of the Effective Date, Exhibit E referenced in Section 3.01(b) of the Concession Agreement and attached thereto is deleted in its entirety and replaced with the document attached hereto as Exhibit 1.
- j. As of the Effective Date, Section 3.01(g) of the Concession Agreement and Paragraph

3 of the February Agreement are deleted in their entirety and replaced with the following:

All payments of the Retention Payments and other payments due from Operator shall be directed to Agreement Administrator at:
New York City Economic Development Corporation
110 William Street
New York, NY 10038
Attn: Downtown Heliport Agreement Administrator
Or at such other location as Agreement Administrator may from time to time designate by written notice.

- k. The following Sections 9.15 and 9.16 are added to the Concession Agreement:
Section 9.15. This Amendment and the Original Concession Agreement shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed in the State of New York, excluding New York's rules regarding conflict of laws and any rule requiring construction against the party drafting this Amendment and/or the Original Concession Agreement.

Section 9.16. If any one or more of the provisions of this Amendment and the Original Concession Agreement is deemed invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

4. Miscellaneous.

- a. This Amendment may not be amended or modified except by a writing signed by the parties.
- b. This Amendment constitutes the entire agreement of the parties hereto with respect to the matters herein amended.
- c. Captions are inserted for convenience only and will not affect the construction hereof.
- d. This Amendment may be executed in counterparts.
- e. Rights and obligations under this Amendment may not be assigned by the Operator without the prior written consent of the City, which shall not be unreasonably delayed or withheld.
- f. Operator hereby represents and warrants that it has all necessary power and authority to execute, deliver and perform its obligations under this Amendment. The undersigned signatory for Operator, by signing this Amendment, personally warrants that he or she has the power and authority to enter into this Amendment on behalf of Operator and to bind Operator to the terms and conditions of this Amendment.
- g. Notwithstanding the reduction in Tourist Flight Operations set forth in Paragraphs 7 and 11 of the February Agreement and Section 2.03 of the Concession Agreement, the City continues to maintain the authority to preclude certain types

of helicopters and further reduce flights pursuant to the terms of Section 2.03 of the Concession Agreement.

- h. Except as modified by this Amendment, all of the terms and conditions of the Original Concession Agreement are hereby in all respects ratified and confirmed. In the event of any inconsistency between the terms of this Amendment and the Original Concession Agreement, the terms of this Amendment shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first written above.

THE CITY OF NEW YORK acting by and through the NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:
Name:
Title:

FIRSTFLIGHT HELIPORTS, LLC d/b/a Saker Aviation Services

By: _____
Name: Ronald J. Ricciardi
Title: President

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

ACTING CORPORATION COUNSEL

EXHIBIT 1**EXHIBIT E****Retention Payments Fee Schedule**

Operator shall pay the City the greater of Minimum Annual Guarantee ("MAG") or the Percentage of Gross Receipts (collectively, the "Retention Payments").

MAG:

Year	1	2	3	4	5	6	7	
Guaranteed Minimum	1,200,000	1,245,000	1,292,250	1,341,863	1,393,956	1,448,654	1,506,086	
	Updated MAG			Extended Term			Optional Term	
Year	8	9	10	1	2	3	4	5
Guaranteed Minimum	1,148,511	814,855.02	848,098	882,870	919,068	956,749	995,976	1,036,811

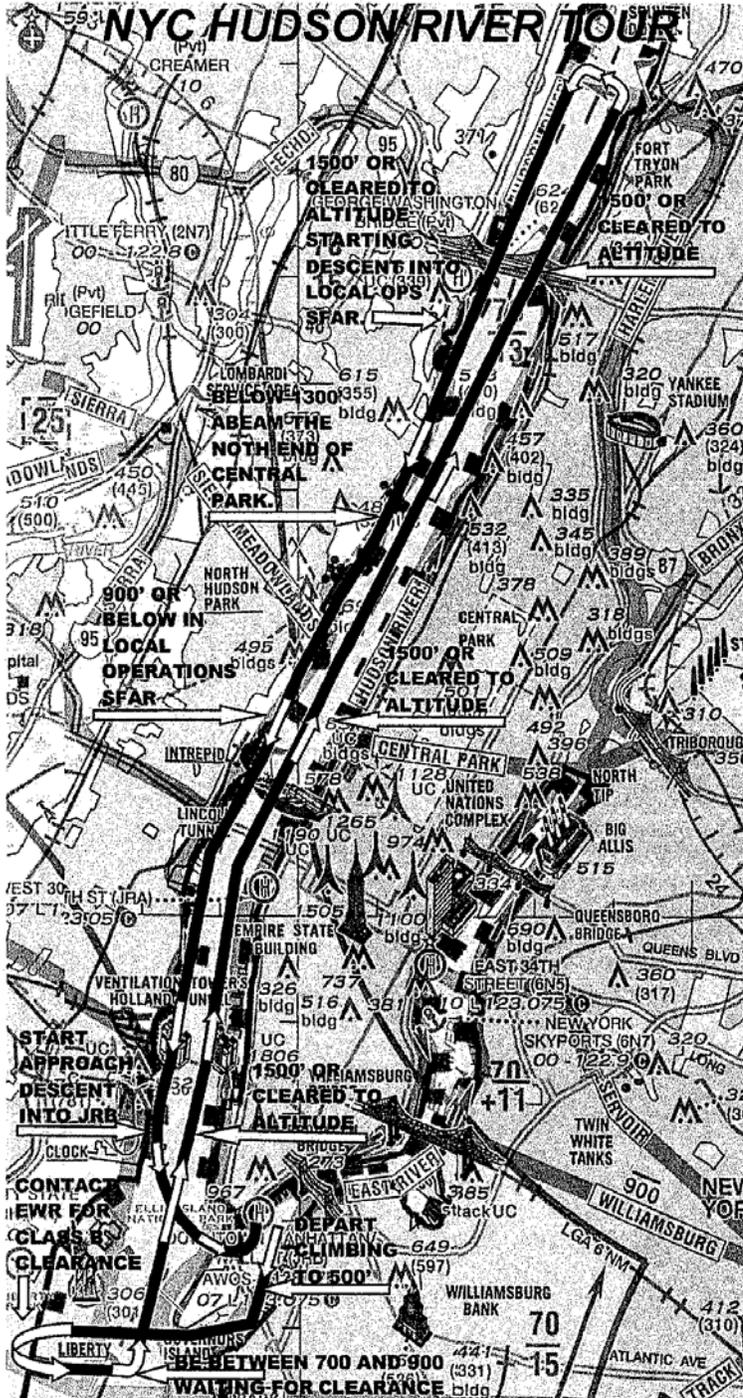
Percentage of Gross Receipts:

Percentage of Gross Receipts shall be paid to the City at the rate of 18% of the first \$5 million of Gross Receipts (the "Base Receipts"). Additionally, the City shall receive 25% of Gross Receipts collected in excess of the Base Receipts.

MAG shall be payable in equal monthly installments on the first day of each month during the Term of this Agreement, except that Retention Payments for Year 9 and subsequent years shall commence on May 1, 2016 and be payable on the first day of each month thereafter for the remainder of the Term. If at any time the Percentage of Gross Receipts for a particular operating year becomes applicable, then, in addition to the monthly installment of the MAG to be paid on the first day of each month, the Operator shall thereafter for the remainder of such operating year pay the additional amount due on the twentieth (20) day of each succeeding month in such operating year.

EXHIBIT 2

EXHIBIT M



Depart JRB towards the cruise ship terminal climbing to 500'.

DO NOT OVERFLY THE CRUISE SHIP.

Stay mid-river over Buttermilk channel turning to the east tip of the southernmost pier on the east side of Governors island. Turn towards the south side of the statue keeping your 1000' standoff.

Make a wide left hand climbing course reversal on the south side of the statue while contacting EWR Tower and request the "Hudson River Northbound at 1500'.

STAY IN THE SFRA (LOCAL OPERATIONS) UNTIL YOU RECEIVE YOUR CLEARANCE

Once handed off to LGA Tower request "The Hudson River Route"

Continue North Bound (Mid River) to Spuytin Duyvil at your cleared altitude and make a left hand turn on the New Jersey side of the river to go southbound.

Once past the GW Bridge, check out with LGA at your cleared altitude, change to the river frequency and make your call descending into the SFRA.

SFRA LOCAL OPERATIONS 900' OR BELOW.

You must be below 1300' abeam the north side of Central Park to be clear of EWR's Class B airspace.

At the clock make your call inbound to JRB and fly an arc towards the green buoy between the south tip of Manhattan and Governors Island for your approach.

If EWR and or LGA will not clear you to 1500', all tours must be conducted in the SFRA at 900' or below.

If ceilings are below 1500' all tours will be flown in the Local Operations SFAR at 900' or below.

REMEMBER YOUR CLOUD CLEARANCE REQUIREMENTS.

All altitudes and or routes segments can be modified to avoid any safety of flight issue.

EXHIBIT 3
EXHIBIT L

	Helicopter Flight Operations Downtown Manhattan Heliport (monthly)													
	Calendar Year 2015	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Total
Row A	Baseline	2319	2216	3413	5732	6456	4607	5645	6673	5487	6979	4766	5008	59301
Row B	Post reduction (50%) Maximum TFO/Month	1160	1108	1707	2866	3228	2304	2823	3337	2744	3490	2383	2504	296451

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes the New York City Department of Health and Mental Hygiene (“DOHMH”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC., formerly known as Catamaran Discount Card Services, LLC., to develop, operate and administer the NYC Drug Discount Card Program available to all NYC residents. DOHMH anticipates that the amendment would extend the term of the existing concession agreement for an additional eighteen (18) months.

BE IT FURTHER RESOLVED, that DOHMH shall submit the amendment to the concession agreement it proposes to enter into with OptumRx Discount Card Services, LLC. to the FCRC for approval.

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

July 13th, 2016

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

AGENCY: NYC Department of Health and Mental Hygiene ("DOHMH")	CONCESSION TITLE/DESCRIPTION: <u>To develop, operate and administer the NYC Drug Discount Card Program available to all NYC residents.</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # _____

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB)
 Competitive Sealed Proposals (CSP)*

Different Procedure * (Sole Source Agreement Other Intent to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC., formerly known as Catamaran Discount Card Services, LLC. to develop, operate and administer the NYC Drug Discount Card Program available to all NYC residents.

Negotiated Concession*

Recommended Concessionaire OptumRx Discount Card Services, LLC. EIN SSN #31-1728846
 Attach Memo(s) *

<p align="center">CONCESSION AMENDMENT TERM</p> Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	<p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____ % <input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$ _____ v. _____ % of Gross Receipts <input checked="" type="checkbox"/> Other formula <u>To be negotiated</u>
LOCATION OF CONCESSION SITE(S)* <input checked="" type="checkbox"/> N/A Address _____ Borough _____ C.B. _____ Block # _____ Lot # _____ *Attach additional sheet	

CONCESSION TYPE (Check all that apply)

> Significant Concession:

NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> Major Concession:

NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.
 The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.
 The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the solicitation.
 The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in

advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.

- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name Erika Yan Title DACC O

Signature  Date 6/30/16

CITY CHIEF PROCUREMENT OFFICER

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

Signature  Date 7/6/16

City Chief Procurement Officer

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM

A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe)

New York City Department of Health and Mental Hygiene ("DOHMH") will be pursuing an amendment to the Concession Agreement with OptumRx Discount Card Services, LLC, formerly known as Catamaran Discount Card Services, LLC, to develop, operate and administer the NYC Drug Discount Card Program available to all NYC residents pursuant to Section 1-16 of the Concession Rules ("different procedures") for the reasons listed in section (B)(2).

B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. **Briefly summarize the terms and conditions of the concession.** *Add additional sheet(s), if necessary.*

To be determined at a later date – when/if the Franchise and Concession Review Committee (FCRC) approves the use of a different procedure to negotiate an amendment to the existing concession agreement with OptumRx Discount Card Services LLC. DOHMH anticipates that the amendment would extend the term of the existing concession agreement for an additional eighteen (18) months.

2. **Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

On January 11, 2011, pursuant to a competitive RFP process, DOHMH entered into a concession agreement with Catamaran Discount Card Services, LLC (formally known as HealthTran, LLC dba HealthTran) to develop, operate and administer the NYC Drug Discount Card Program to be made available to all NYC residents, known as the BigAppleRX. This agreement expires on February 16, 2017. DOHMH intends to develop a new Request for Proposals to solicit a concessionaire to develop, operate and administer the NYC Drug Discount Card Program.

While DOHMH develops the RFP and completes the competitive solicitation process, there is a continued need to ensure that NYC residents have access to pharmaceutical drugs at discount prices. Currently, over 800,000 IDNYC cards have been issued by the City with the BigAppleRX benefit feature on the card, enabling cardholders to purchase pharmaceutical drugs at discount prices provided by the current BigAppleRX provider. Those IDNYC cards will remain in effect until 5 years after their effective date. Given that the BigApple RX benefit is linked to these IDNYC cards, transitioning to a new provider will be administratively complicated and time consuming. In addition, the Mayor's Office of Immigrant Affairs has launched the ActionHealthNYC program (Program), which will provide uninsured low-income immigrant New Yorkers with better access to health care services. Participants in that Program will either have an IDNYC card or will be issued one, and the prescription drug benefit of BigAppleRX will be a key feature of the health care access provided under the Program. That Program will have a duration of at least one year with a

high potential for extension and expansion. Maintaining the current BigAppleRX provider in place during the first year of that Program will make those benefits available without administrative interruption and will give DOHMH time to select a new concessionaire. Therefore, DOHMH believes that the City will be best served by extending the concession agreement with OptumRx Discount Card Services, LLC to enable the residents of New York City to continue to have access to pharmaceutical drugs at discount prices without interruption while DOHMH initiates a new competitive request for proposal process to select a new concessionaire.

3a. Briefly explain the selection procedure that will be utilized. [Explain]

DOHMH intends to seek FCRC authorization to negotiate an amendment to the concession agreement with OptumRx Discount Card Services, LLC to extend the current concession agreement, which expires on February 16, 2017, in order to sustain uninterrupted services for the NYC Drug Discount Card Program (Step 1). Pending FCRC Step 1 approval, DOHMH intends to negotiate the terms of an extension with OptumRx Discount Card Services, LLC.

Once negotiated and if determined by DOHMH to be a significant concession, DOHMH and the FCRC will hold a joint Public Hearing on the proposed amendment before presenting it to the FCRC for "Step 2" approval at a second meeting. If DOHMH determines that concession to be non-significant, the agency will present the full negotiated amendment with OptumRx Discount Card Services, LLC to the FCRC and request the required FCRC authorization to enter into the amendment directly (without the need for an initial public hearing).

3b. If the selection procedure is a negotiated concession, check the applicable box: N/A

The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:

- The Agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; [Explain]
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; [Explain]
- The Agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. [Explain]
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. [Explain]

Approved by CCPO: _____ **on** ___/___/___.

4. If the Agency has/will request unanimous FCRC approval to waive advance written notice each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. [Explain] N/A



NEW YORK CITY DEPARTMENT OF
HEALTH AND MENTAL HYGIENE

Mary T. Bassett, MD, MPH

Commissioner

Eric Zimiles
Assistant Commissioner
Division of Prevention and
Primary Care

ezimiles@health.nyc.gov

Gotham Center
42-09 28th Street, 12th Floor
Queens, NY 11101-4132

1 347 396 4815 tel
1 347 396 8039 fax

TO: All Borough Presidents
All Community Boards

FROM: Eric Zimiles

SUBJECT: Franchise & Concession Review Committee approval of a different procedure to negotiate an amendment to the concession agreement between the City of New York acting by and through the Department of Health and Mental Hygiene and Catamaran Discount Card Services, LLC. to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents

DATE: June 3, 2016

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify all Borough Presidents and Community Boards that the New York City Department of Health and Mental Hygiene (the Department) is seeking Franchise and Concession Review Committee (FCRC) approval to negotiate an amendment to the concession agreement with Catamaran Discount Card Services, LLC (name change pending) to develop, operate and administer the NYC Drug Discount Card Program available to all New York City residents, known as the Big Apple Rx.

It is anticipated that this amendment would extend the term of the existing concession agreement for an additional eighteen (18) months. This extension would ensure continuous operation of the NYC Drug Discount Card Program while the Department selects a new concessionaire through a request for proposal process.

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

If you have any questions or comments, please contact Eric Zimiles at (347) 396-4815 or via email at ezimiles@health.nyc.gov.

Thank you,