

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation (Parks) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source License Agreement (Agreement) with Open Space Alliance (OSA) for the operation of a concert series, which includes food service, merchandise sales and other public programming, at 50 Kent Avenue, Bushwick Inlet Park, identified as Block 2287, Lot 1 in the Borough of Brooklyn (Site).

BE IT FURTHER RESOLVED, that Parks shall submit the Agreement it proposes to enter into with OSA to the Franchise and Concession Review Committee for approval.

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

DATE 01/14/2015

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: New York City Department of Parks & Recreation ("Parks")	CONCESSION TITLE/DESCRIPTION: <u>The operations of a concert series, which includes food service, merchandise sales and other public programming, at 50 Kent Avenue, Bushwick Inlet Park.</u>
# VOTES required for proposed action = <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # <u>B529-0</u>

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

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

Different Procedure * (Sole Source Agreement Other _____)

Negotiated Concession*

Recommended Concessionaire Open Space Alliance EIN SSN # 01-0849087
 Attach Memo(s) *

<p align="center">CONCESSION AGREEMENT 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>
<p>LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A</p> Address: <u>50 Kent Avenue</u> Borough: <u>Brooklyn C.B.: 1</u> Block #: <u>2287</u> Lot #: <u>1</u> *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.

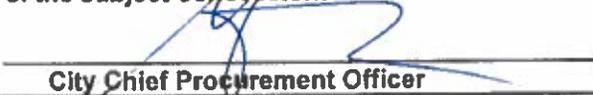
Name Alexander Han Title Deputy Director of Concessions

Signature 

Date 12/30/2014

CITY CHIEF PROCUREMENT OFFICER

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

Signature 
City Chief Procurement Officer

Date 12/31/14

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)

The New York City Department of Parks and Recreation ("Parks") will be pursuing a Sole Source Concession Agreement ("Concession Agreement") pursuant to Section 1-16 ("different procedures") of the Concession Rules of the City of New York ("Concession Rules") for the reasons listed in Section (B)(2) below.

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

1. Briefly summarize the terms and conditions of the concession.

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 a License Agreement with the Open Space Alliance (OSA) for the operations of a concert series, which includes food service, merchandise sales and other public programming, at 50 Kent Avenue, Bushwick Inlet Park.

2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.

The Open Space Alliance for North Brooklyn, Inc. ("OSA"), a not-for-profit corporation, was incorporated in 2003 to raise private funds to expand and improve open space in Brooklyn Community District 1. Since its inception, OSA has been working with the NYC Department of Parks & Recreation ("Parks"), elected officials, and the community to provide for the operation, maintenance, activation, enhancement, and expansion of local parks ("Services"). OSA does not exclusively focus its efforts on a single park; rather, it makes contributions that benefit all of the park properties within Community District 1 ("District Parks"). OSA's board of directors is comprised of business and community leaders who have a longstanding record of being effective advocates for open space and park resources in Brooklyn and elsewhere.

In 2008, OSA signed a formal operating agreement with Parks (the "Agreement") to create an effective public-private partnership. The Agreement formalized the relationship between OSA and Parks, allowing them to work together to complement each other's efforts in connection with improving and administering District Parks, including a waterfront area of almost 30 acres of parkland known as Bushwick Inlet Park (the "Park"), currently in the process of acquisition and development .

Per the terms of the Agreement, OSA may provide Services and public programming including, but not limited to, activities involving food, horticulture, athletics, maintenance, education, recreation, tours, concerts, music festivals, and exhibits for filming at District Parks. Where appropriate, OSA may receive donations for such activities and generate and/or retain revenues through fees or other charges for such activities. The terms of the 2008 Agreement provided OSA with a 5-year license term after which the

license could be renewed for an additional 5-year period at the discretion of the Commissioner. Parks and OSA have exercised the renewal option and the term of the Agreement extends until May 5, 2018.

In 2012, Parks permitted OSA to use a portion of the Park known as 50 Kent Avenue located between North 11th Street and North 12th Street (the "Premises"), consisting of a hardscaped asphalt surface surrounded by a perimeter fence, to present a concert series (the "Series") from June through September of 2012. The Premises does not contain any vegetation or grass and therefore Parks determined that the Series would be an appropriate use of the Premises and would also help activate this otherwise unoccupied site. The terms of the Series' permit allowed OSA to host a maximum of 20 concerts. Ultimately, the Series brought a public awareness to a wide variety of recreational and cultural events available to the public at the Premises.

The Premises was the site of the former Williamsburg Works Manufactured Gas Plant ("MGP") and will be undergoing an Interim Remedial Measure ("IRM") lead by National Grid. The IRM was originally expected to commence in 2012, but commencement has been delayed until the end of 2015. The IRM is being performed under the oversight of the New York State Department of Environmental Conservation ("DEC") and the New York State Department of Health. The IRM includes the installation of recovery wells around the perimeter of the Premises and a large scale excavation of MGP contaminated soil. The contaminated soil is below an asphalt/concrete cap. The operation of a concert series, which includes food service, merchandise sales, and other public programming will be subject to approval by the New York City Department of Health & Mental Hygiene ("DOHMH") and all other agencies having jurisdiction. The concession will be an interim use of the site pending the IRM by National Grid.

Following the 2012 Series, Parks issued OSA an additional permit for the Series for the 2013 season under the belief that the IRM would commence in 2013. When the IRM was delayed yet again, Parks issued OSA an additional permit for the 2014 season believing that it would be the final year.

Since 2012, the Series has generated \$628,000 of revenue derived from entrance fees, concessions, sponsorship agreements and other programs. OSA uses this revenue to cover the costs of providing free public amenities, maintaining the Premises, and providing Services to District Parks. These funds make up approximately 40% of OSA's annual revenues.

<u>SERIES YEAR</u>	<u>PERMITTED PAID CONCERTS</u>	<u>PERMITTED FREE CONCERTS</u>	<u>EXECUTED PAID CONCERTS</u>	<u>EXECUTED FREE CONCERTS</u>
2012	13	6	13	6
2013	13	6	7	6
2014	6	3	6	3

2012 revenue from series - \$200,000

2013 revenue from series - \$200,000

2014 revenue from series - \$228,000

The Series has been a success since its inception in 2012. The most recent Series, which ran from May to October of 2014, featured a combination of free outdoor recreational activities. This included free bicycle riding clinics, roller skating and fitness classes, as well as free concerts, movie nights and an open-air market. The local community views the Series very favorably. Moreover, the Series has been well attended by people from the community as well as by those from neighborhoods outside of the Community Board 1 area.

As mentioned above, the Series has been successful in generating revenue, and this revenue has been used to provide additional Services to District Parks. For example, OSA has used the revenue generated by the Series to pay for the operation and maintenance of the McCarren ice rink, a renovation of the McCarren Park dog run, the installation of a fence at Cooper Playground, and the installation of new trashcans, moveable tables, and chairs for five parks, just to name a few. Accordingly, and in order to maintain this augmented level of Service to the public in District Parks, and given OSA's history at the Premises and commitment to the North Brooklyn area, Parks is requesting authorization to negotiate a sole source agreement with OSA to ensure the seamless operation of the Series. Moreover, Parks believes that a sole source agreement is appropriate here where, because of the upcoming IRM of the Premises, Parks is unsure of its future plans for the space and, therefore, needs some flexibility.

It's anticipated, that pursuant to a sole source agreement, the profits generated from the Series will be used to operate and maintain the Premises as well as to subsidize the cost of the Premises' free events and activities. Any additional revenue will be used to provide Services to other District Parks.

Given that OSA has a specific commitment to the Premises and District Parks (as outlined in the Agreement), Parks believes that it is in the best interest of the City to negotiate a sole source concession with OSA rather than proceed via the competitive solicitation process.

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

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate a Sole Source Agreement with OSA, which will go before the FCRC on January 14, 2015 ("Step 1"). Once negotiated and if determined by Parks to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed Agreement before presenting it to the FCRC for "Step 2" approval at a second public meeting. If Parks determines the concession to be non-significant, Parks will present the fully negotiated Agreement with OSA to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial joint 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**



Mitchell J. Silver, FAICP
Commissioner

City of New York
Parks & Recreation
The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Honorable Eric Adams, President of the Borough of Brooklyn
Mr. Gerald Esposito, District Manager, Brooklyn Community Board 1

FROM: Eric Weiss, Project Manager *EW*

SUBJECT: Intent to Seek Franchise and Concession Review Committee Approval to Utilize a Different Procedure to Negotiate a Sole Source License Agreement with Open Space Alliance for operation of a concert series at 50 Kent Avenue, Bushwick Inlet Park

DATE: December 4, 2014

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Brooklyn Borough President and Brooklyn Community Board #1 that the New York City Department of Parks and Recreation is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate a sole source license agreement with Open Space Alliance (“OSA”) for operation of a concert series, which includes food service and sales, merchandise sales, and other public programming, at 50 Kent Avenue, Bushwick Inlet Park.

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

Please direct any questions or comments you may have to Eric Weiss, Project Manager, by phone at (212) 360-1397 or via email at eric.weiss@parks.nyc.gov. These comments must be made by January 12, 2015 to ensure consideration.

Thank you.