

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 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 an amendment to the existing license agreement between Parks and York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan. Parks anticipates that the amendment would extend the agreement for one (1) year, with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

BE IT FURTHER RESOLVED, that Parks shall submit the amendment to the existing license agreement it proposes to enter into with York Avenue Tennis, LLC to the FCRC for approval.

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

April 13th, 2017

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: Operation and management of an indoor tennis facility at Queensboro Oval, Manhattan.
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # M70-IT

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 existing license agreement)

Negotiated Concession*

Recommended Concessionaire: York Avenue Tennis, LLC EIN SSN # 11-3888490
 Attach Memo(s) *

CONCESSION AGREEMENT TERM

Initial Term: To be negotiated
 Renewal Option(s) Term: To be negotiated

Total Potential Term: To be negotiated

LOCATION OF CONCESSION SITE(S)* N/A
 Address: York Avenue between E. 59 St & E. 60 St.;
 New York, NY 10035
 Borough: Manhattan C.B. 8
 Block # 1454 Lot # 1
 *Attach additional sheet

ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS
 (Check all that apply)

Additional description attached

Annual Minimum Fee(s) \$ _____

% Gross Receipts _____%

The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts

Other formula To be negotiated

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 Director of Concessions

Signature



Date 2/24/2017

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 2/24/17

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 Department of Parks and Recreation ("Parks") will be pursuing an amendment to its existing license agreement pursuant to Section 1-16 of the Concession Rules of the City of New York (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 Parks' existing license agreement with York Avenue Tennis, LLC at Queensboro Oval, Manhattan.

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

York Avenue Tennis, LLC operates an indoor tennis concession at Queensboro Oval, Manhattan under a license agreement with Parks. They have operated at this site since 1979 and their current agreement commenced on September 1, 2007 for a ten-year term, expiring on August 31, 2017. Queensboro Oval is a unique site, located underneath the Manhattan side of the Ed Koch Queensborough Bridge. At 1.2 acres of red clay, the site provides for eight clay tennis courts, currently operated by York Avenue Tennis, LLC for nine months out of the year underneath a seasonal tennis bubble.

The Queensboro Oval tennis concession serves more than 1,500 patrons each week with a majority of its usership residing in Manhattan's east side. There are no membership fees and they provide opportunities for New Yorkers to reserve courts on an hourly basis while providing opportunities for lessons with trained instructors including cardio tennis, drill and play, match play, and clinics. Junior development programs are also available with classes for pee-wee tennis (ages 2 ½- 6), pre-juniors (ages 6-8) and juniors (ages 9 and up). The City Parks Foundation also provides free youth instructional programs at Queensboro Oval, reaching more than 500 children over the past decade. The facility is a true recreational asset to the community.

Further, York Avenue Tennis, LLC currently pays the City of New York more than \$2.5 million annually in license fees. The calculation is based on the greater of a minimum fee vs. 35% of gross receipts. The minimum fee that the City currently receives, represents more than 50% of the concessionaire's grosses at this site.

As the current license agreement nears its expiration, Parks has received feedback from Manhattan Community Board 8 and the area's elected officials regarding alternative uses of the site. CB 8, the elected officials and some local residents have expressed support of seeing the site converted into a year-round outdoor park without an indoor seasonal bubble. Many other members of the

community, including local residents and users of the tennis facility have expressed support of seeing an indoor seasonal bubble continue. Options discussed for the potential future of the site have included a year-round outdoor park with a turf field, a year-round outdoor park with a smaller turf field and four tennis courts and a seasonal indoor sports concession with additional outdoor amenities during the outdoor season, Parks is listening to ideas and communicating with all stakeholders while developing a plan for a longer-term vision of providing year-round recreation at the Queensboro Oval site.

While this essential community outreach and planning is being done, Parks does not want to see this site, located under a bridge, remain fallow. Therefore, Parks would like to amend its existing agreement with York Avenue Tennis LLC to allow for an extension of one (1) year, with two (2) one (1)-year renewal options, to be exercised at the sole discretion of Parks. This will ensure that the facility's users can continue enjoying the recreation and fitness opportunities provided by the concession, while Parks works with the community to consider options and develop a long-term plan for year-round recreation.

For the reasons set forth above, Parks believes that it is in the City's best interest to amend York Avenue Tennis, LLC's existing agreement to extend the term on a short-term basis rather than proceed with a competitive solicitation process.

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

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 an amendment to its existing license agreement with York Avenue Tennis, LLC which will go before the FCRC on April 13, 2017 (Step 1). Once negotiated and if determined by Parks to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed amendment to its existing License Agreement before presenting it to the FCRC for "Step 2" approval at a second Meeting. If Parks determines the concession to be non-significant, the agency will present the fully negotiated amendment with York Avenue Tennis, 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**



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345

E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

To: Hon. Gale Brewer, President of the Borough of Manhattan
Ms. Latha Thompson, District Manager, Manhattan Community Board #8

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Notice of intent to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate an amendment to the license agreement between the New York City Department of Parks and Recreation and York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan.

DATE: March 3, 2017

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board 8 that the New York City Department of Parks and Recreation ("Parks") is seeking Franchise and Concession Review Committee ("FCRC") approval to negotiate an amendment to the license agreement with York Avenue Tennis, LLC for the operation and management of an indoor tennis facility and clubhouse at Queensboro Oval, Manhattan. It is anticipated that the amendment would extend the agreement for one (1) year, with two (2) one (1)-year renewal options to be exercised at the sole discretion of Parks.

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 feel free to contact me at 212-360-3426 with any questions or comments you may have.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 2)

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 an amendment to the Sole Source License Agreement (“Agreement”) with Statue Cruises, LLC for the operation and maintenance of passenger ferries for the purpose of embarking and discharging passengers on a regular schedule between The Battery, Liberty Island and Ellis Island, and for the purpose of embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to day and night charters of vessels, owned, operated or chartered by Statue Cruises, LLC at landing slips and adjacent walkways located in The Battery, Manhattan. Parks anticipates that the amended Agreement would, among other things, extend the term of the existing Agreement through September 30, 2019.

BE IT FURTHER RESOLVED, that Parks shall submit the amendment it proposes to enter into with Statue Cruises, LLC 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**

April 13, 2017

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: Amendment to the current License Agreement with Statue Cruises, LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION IDENTIFICATION # <u>M5-E-M</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 Intent to negotiate an amendment to the current License Agreement with Statue Cruises, LLC.

Negotiated Concession*

Recommended Concessionaire Statue Cruises, LLC EIN SSN #20-8877253
 Attach Memo(s) *

CONCESSION AGREEMENT TERM Initial Term: <u>To be negotiated</u> Renewal Option(s) Term: <u>To be negotiated</u> Total Potential Term: <u>To be negotiated</u>	ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply) <input type="checkbox"/> Additional description attached
LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A Address: <u>Landing slips, Battery Park</u> Borough: <u>Manhattan C.B.: 1</u> Block #: <u>3</u> Lot #: <u>1</u> *Attach additional sheet	<input type="checkbox"/> Annual Minimum Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input type="checkbox"/> The Greater of Annual Minimum Fee(s) of \$_____ v. _____% Gross Receipts <input checked="" type="checkbox"/> Other formula <u>To be negotiated</u>

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 Director of Concessions

Signature 

Date 4/4/2017

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 4/4/2017

CONCESSION 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 & Recreation ("Parks") will be pursuing an amendment to the current sole source license agreement ("License Agreement") pursuant to Section 1-16 of the concession rules of the City of New York found at Title 12 of the Rules of the City of New York ("different procedures") 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 when/if the FCRC approves the use of a different procedure to negotiate an amendment with Statue Cruises, LLC ("Statue Cruises").

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

The National Park Service ("NPS") and Statue Cruises, LLC ("Statue Cruises") are parties to an agreement by which Statue Cruises provides ferry services to the Statue of Liberty National Monument ("Statue of Liberty") and Ellis Island from The Battery, Manhattan. On February 28, 2014, the parties amended the agreement to extend the expiration date by eighteen (18) months, from March 31, 2018 to September 30, 2019. Statue Cruises is the only ferry operator licensed by NPS to operate at the Statue of Liberty and Ellis Island. The justification for the amendment was mitigation of the effects of a two (2) year closure of the Statue of Liberty and Ellis Island to address damage from Superstorm Sandy and related repair work.

The current license agreement between Parks and Statue Cruises to operate and maintain a commercial ferry service to the Statue of Liberty and Ellis Island from The Battery, Manhattan expires on December 31, 2017. Parks is proposing to amend the current agreement to extend the term by twenty-one (21) months so that it expires on September 30, 2019, conterminously with the agreement between NPS and Statue Cruises.

Since NPS is the only entity with power to grant access to the Statue of Liberty and Ellis Island, and Statue Cruises is the sole ferry service with an agreement with NPS to provide said service, Parks has determined that a competitive solicitation process for this concession is not warranted. Parks is committed to offering this service to the public. Due to Statue Cruises' relationship with NPS, Parks is requesting sole source approval to negotiate an extension of the term of the current agreement to make it coterminous with the agreement between NPS and Statue Cruises. Parks anticipates that, as part of the amendment to the current License Agreement between Parks and Statue Cruises, Parks may add additional ticket sales locations in The Battery.

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

Pursuant to §1-16 of the concession rules found at Title 12 of the Rules of the City of New York, Parks is requesting FCRC authorization to utilize a different procedure to amend its current sole source license agreement with Statue Cruises; this request will go before the FCRC on April 13, 2017 ("Step 1"). Once the amendment has been negotiated, and if it is determined to be a significant concession, Parks and the FCRC will hold a joint public hearing on the proposed amendment before presenting it to the FCRC for approval at a public meeting ("Step 2").

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 to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. **N/A**



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345

E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

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

FROM: Darryl Milton, Project Manager, Revenue Division 

SUBJECT: Notice of Intent to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate an amendment to the license agreement between New York City Department of Parks and Recreation and Statue Cruises, LLC for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan.

DATE: March 3, 2017

Pursuant to Section 1-16 of the Concession Rules of the City of New York, this is to notify the Manhattan Borough President and Manhattan Community Board #1 that the New York City Department of Parks & Recreation ("Parks") is seeking Franchise and Concession Review Committee approval to utilize a different procedure to negotiate an amendment to the current license agreement with Statue Cruises, LLC ("Statue Cruises") for the operation and maintenance of a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan. It is anticipated that the amendment would extend the term of the license agreement through September 30, 2019 to make it coterminous with the agreement between Statue Cruises and the National Park Service for a commercial ferry service to the Statue of Liberty National Monument and Ellis Island from The Battery, Manhattan. In addition, it is anticipated that the amendment may also provide additional ferry ticket vending locations in The Battery.

Parks has determined that the concession is not 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 Darryl Milton, Project Manager, by phone at (212) 360-3490 or via email at darryl.milton@parks.nyc.gov.

Thank you.

FRANCHISE AND CONCESSION REVIEW COMMITTEE

April 13, 2017

(Cal. No. 3)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) authorizes NYC & Company, Inc., on behalf of the New York City Department of Small Business Services (“SBS”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a non-exclusive, Sole Source License Agreement (“License Agreement”) with ONLY NY, Inc. (“ONLY NY”) for the non-exclusive use of city-owned trademarks on merchandise. The License Agreement will provide for a license term beginning on October 1, 2015 and shall continue through March 31, 2020 with an option for the City to renew the License Agreement on substantially the same terms and conditions, in its sole discretion, for two (2) years. For each license year of the initial term, ONLY NY shall pay royalties equal to twelve percent (12%) of Net Sales (as defined in the License Agreement). The License Agreement provides for a guaranteed minimum royalty of forty thousand dollars (\$40,000) covering the period from January 1, 2017 through March 31, 2020.

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

April 13, 2017

Date: _____

Signed: _____

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

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

AGENCY: NYC & Company, Inc. on behalf of NYC Department of Small Business Services	RECOMMENDED CONCESSIONAIRE Name: ONLY NY, Inc. Address: 510 West 123rd Street #51, New York, NY 10027 Telephone # (212) 234-1051 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #26-1736134 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: Non-exclusive use of City-Owned Trademarks on Merchandise CONCESSION I.D.# NYCCO-2017-004
# VOTES required for proposed action = 4 <input type="checkbox"/> N/A		

LOCATION OF CONCESSION SITE(S*) Address _____ N/A
 *Attach additional sheet **Borough** _____ **C.B.** _____ **Block #** _____ **Lot #** _____

SELECTION PROCEDURE
 (*CCPO approval of CRFA required)

Competitive Sealed Bids
 Competitive Sealed Proposals* (FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___.)
 Different Selection Procedure: * (Sole Source Agreement Other _____)
 > FCRC approved different selection procedure on 4/13/16.
 Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Term: From 10/1/15 To 3/31/20
Renewal Option(s) Term: From 4/1/20 To 3/31/22
 From ___/___/___ To ___/___/___

Total Potential Term: 6.5 Years

* >20 years – FCRC unanimously approved term on ___/___/___

ANNUAL REVENUE
 (Check all that apply)
 Additional sheet (s) attached

Annual Fee(s) \$ _____
 % Gross Receipts _____%
 The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts
 Other For each license year of the initial term, ONLY NY, Inc. shall pay royalties equal to twelve percent (12%) of Net Sales.

Guaranteed Minimum Royalty payment shall be payable as follows:

 A guaranteed minimum royalty of forty thousand dollars (\$40,000).

NOTIFICATION REQUIREMENTS

Subject concession was 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 completed its consultations with each affected CB/BP regarding the scope of the solicitation by ___/___/___, which was at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by ___/___/___, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

The Agency certifies that each affected CB/BP received written notice by 3/4/16, which was at least 40 days in advance of the FCRC meeting on 4/13/16 at which the agency sought and received approval to use a different selection procedure.

The Agency certifies that each affected CB/BP received written notice on ___/___/___, at the time that a notice of 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 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 award 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 award of the subject concession agreement.

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

City Chief Procurement Officer

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

NYC & Company, Inc. ("NYC & Company") on behalf of the New York City Department of Small Business Services ("SBS") intends to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, for SBS to enter into a Sole Source License Agreement ("License Agreement") with ONLY NY, Inc. ("ONLY NY") for the non-exclusive use of city-owned trademarks on merchandise. ONLY NY produces adult and children's apparel and accessories for its ONLY NY store and ONLY NY e-commerce site. ONLY NY has been a successful licensee in the past and their unique design capabilities and retail channel offer the opportunity for merchandise with city owned trademarks to be sold in places where it is not being sold currently. Therefore, it is in the City's best interest to enter into a sole source agreement with ONLY NY. This proposed non-exclusive license agreement will not bar opportunities for other apparel manufacturers.

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

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

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

NYC & Company/SBS negotiated that ONLY NY shall pay licensing fees equal to twelve percent (12%) of Net Sales with a guaranteed minimum royalty of forty thousand dollars (\$40,000) that shall be paid on or before March 31, 2020.

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 award of the concession is in the best interest of the City because:

ONLY NY held a non-concession agreement for the purpose of testing the product interest to its distribution channels and customers unique to ONLY NY. At the time the non-concession agreement with ONLY NY was executed the parties anticipated that the revenue would not exceed administrative costs, which were estimated to be \$8,500; however ONLY NY received an extremely positive response from consumers and sales soared. Royalties totaled \$12,736.95. It was in the City's best interest to allow the sales to proceed. It was impossible to determine during negotiation of the non-concession agreement that the pilot program would have been so successful and, based on the information available at the time, there was no basis to justify bringing the matter before the FCRC for a concession agreement. Given ONLY NY's past success and new consumer awareness, it is now in the City's best interest to enter into a concession agreement with ONLY NY to develop this market segment. NYC & Company/SBS is seeking to enter into an agreement that includes the excess revenue from the non-concession agreement. ONLY NY maintains unique manufacturing and distribution arrangements with both their brick-and-mortar store locations, as well as their e-commerce site. ONLY NY proposed unique designs to be created by ONLY NY.'s art department to be used solely for this arrangement if approved. This proposed non-

exclusive license agreement will not bar other opportunities for other apparel manufacturers and will allow the City to diversify apparel options available to consumers at retail.

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 __/__/__, 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 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 __/__/__.

- _____, a NYC citywide newspaper on __/__/__ and __/__/__
- _____, a NYC citywide newspaper on __/__/__ and __/__/__

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.

ADVERSE BUSINESS INTEGRITY INFORMATION *Describe each such problem; provide statement that agency has approved the concessionaire's Corrective Action Plan.*

LICENSE AGREEMENT

AGREEMENT made this day of February _____, 2016, by and between the City of New York (the “City” or “Licensor”), acting by and through the New York City Department of Small Business Services with its principal place of business located at 110 Williams Street, 2nd Floor, New York, NY 10038, and Only NY, a New York Incorporated company with a place of business at 510 West 123rd St. #51 New York, NY 10027 (hereinafter “Licensee”).

IN CONSIDERATION OF the mutual promises, covenants and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION I (License)

Subject to the limitations, terms and conditions set forth herein, Licensor hereby grants to Licensee a limited, revocable non-exclusive license to use the trademarks and service marks listed in Exhibit 1 hereto (individually and/or collectively the “Property”) solely in the manner approved in advance in writing by Licensor during the Term in connection with the manufacture, advertising, promotion, sale, and offering for sale of the products listed in Exhibit 2 (individually and/or collectively the “Licensed Products”) in the United States (including its territories and possessions) and Canada (“Territory”).

The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this License Agreement by the City. All sales of Licensed Products pursuant to this License Agreement shall be made by or through Licensee, who agrees to account to Licensor for all sales in the Territory. The City hereby appoints as its agent for all purposes under this License Agreement NYC & Company, Inc., a not-for-profit corporation organized and existing under the laws of the State of New York and having an address at 810 Seventh Avenue, 3rd Floor, New York, NY 10019 (“NYC & Company”).

SECTION II (Express Conditions and Limitations)

The license granted herein is subject to the following express conditions and limitations:

(a) Licensee agrees to use the applicable trademark and copyright notices as directed by Licensor (™, ® or ©), as well as any additional notations directed by Licensor in connection with the first and most prominent usages of the Property on or in connection with all Licensed Products, hang tags, and packaging: “All New York City logos and marks depicted herein are the property of the City of New York and may not be reproduced without written consent. © 2017 (or other year of initial publication). City of New York. All rights reserved.” Licensee agrees to display the applicable notices and notations as directed by the City on all web sites, displays, advertising, sales brochures, and other promotional materials for each Licensed Product (hereinafter the “Promotional Materials”): “All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2017 (or other initial year of publication). City of New York. All rights reserved.” Any shortened version of such notices may be used only with the City’s prior written approval.

(b) Licensee agrees that it will not use the Property in any advertising, promotion, sale, or offering for sale of the Licensed Products except as depicted in Exhibit 2 hereto, or as approved by the City in advance in writing.

(c) Information labels which include the statements set forth in Exhibit 3, attached hereto and made a part hereof, shall be affixed to the Licensed Product, or to the packaging for the Licensed Product. The City may, from time to time after consultation with Licensee, amend the language of the labels upon written notice thereof to Licensee. Licensee shall purchase such hangtags, holograms and/or adhesive labels that identify and authenticate the Licensed Product ("Product Authentication Materials") as required by the City from the City's authorized supplier of Product Authentication Materials. Such Product Authentication Materials shall be displayed in connection with Licensed Products sold or offered for sale by Licensee in a form and location specified by the City.

(d) The Property shall not be used in connection with the trademarks, service marks, trade names, corporate names, or personal names of any third party, except with the prior written consent of the City.

(e) The Property shall not be used by Licensee or any entity or individual controlled directly or indirectly by Licensee as or as any part of its corporate name, trade name, fictitious name, "d/b/a," symbol, logo, or other identifier.

(f) The Licensed Product and Licensee's manufacture, sales, promotion, marketing and selling of the Licensed Product shall be in full compliance (at Licensee's sole cost and expense) with all applicable federal, state and local statutes, rules, regulations and orders. If Licensee is required to or chooses to recall or remove the Licensed Product to maintain conformity to any such statutes, rules, regulations or orders, Licensee shall bear all costs, expenses and charges caused by or related to such recall or modification.

(g) No license is granted hereunder for the use of the Property for any purpose other than upon or in connection with the Licensed Product. No license is granted hereunder for the manufacture, sale or distribution of Licensed Products to be used for publicity purposes, packaged as a combined sales, as giveaways, or to be disposed of under similar methods of merchandising. In the event that Licensee desires to sell Licensed Products for such purposes, Licensee acknowledges and agrees that it must first seek and obtain a separate license therefore from the City, and that the user thereof must also obtain a separate license from Licensor for such use of the Licensed Products. Licensee acknowledges that such separate license may be withheld for any reason.

(h) Licensee may manufacture, promote, advertise, sell, and offer for sale the Licensed Product only in the form approved by the City.

(i) Subject to the City's prior written approval in the City's sole discretion, Licensee agrees to adhere to such quality and ethical standards as may be provided by the City from time to time. The current quality control guidelines and ethical standards in effect are attached hereto as Exhibit 4 and 5.

(j) Subject to the City's prior written approval in the City's sole discretion, Licensee shall sell the Licensed Products in the Territory. The City may object to the continued sale of any Licensed Products that the City determines in its sole discretion to be inconsistent with the goodwill and reputation represented by the Property, or otherwise not in the best interests of the City.

(k) Licensee agrees and acknowledges that its license extends only to the Territory, and that it has no rights in the Property or to export, sell or authorize or permit the sale of any Licensed Products or other products or services bearing or otherwise associated with the Property outside the Territory, or any such proposed or potential sales that Licensee reasonably knows or should know would occur outside the Territory.

(l) Co-Op Budget – Licensee will provide NYC & Company with a minimum of one hundred (100) units per year to be used, in their sole discretion, as promotional products.

**SECTION III
(Term)**

This License Agreement shall become effective upon written notice from NYC & Company to Licensee (the "Effective Date"). The term (the "Term") of this License Agreement shall commence October 1, 2015 and shall continue through March 31, 2020. In addition to the Initial Term, the Licensor shall have the option in its sole discretion of renewing this License Agreement on substantially the same terms and conditions for a period of two (2) years (together with the Initial Term, the "Term"). Nothing herein shall be construed as obligating Licensor to exercise its renewal option, or as preventing the parties from negotiating or agreeing to a higher annual Advance or higher Guaranteed Minimum Royalties

**SECTION IV
(License Years)**

For purposes of administering this License Agreement and of computing royalty payments owing from Licensee to the City hereunder, the term "License Year" shall apply to each calendar year during the Term.

**SECTION V
(Royalties)**

In each License Year of this License Agreement, for products bearing solely the Licensed Property (or the Property with the Licensee's marks) Licensee shall pay to NYC & Company for the license granted herein a royalty equal to twelve percent (12%) of Net Sales. In the event the parties wish to co-brand the Property and the Licensee's marks with any additional marks, the parties shall mutually agree to co-brand and mutually agree to the co-brand royalty in an amendment to this Agreement. The term Net Sales means the gross invoice price billed to purchasers of Licensed Products (whether sold by Licensee or any person or entity acting on behalf of Licensee) less only promotional allowances, taxes, freight charges (if separately stated) and such other discounts as may be approved in writing by NYC & Company, and any actual and adequately documented returns. Net Sales shall include insurance proceeds received by Licensee in payment for Licensed Products. Licensed Products shall be considered sold (and therefore included in Net Sales and subject to royalty payments) when they are billed, invoiced, shipped, or paid for, whichever occurs first. No costs incurred in the manufacture, sale, offering for sale, promotion, advertisement, or shipment of the Licensed Products shall be deducted, nor shall deductions be made for cash, taxes, tariffs, freight, advertising, any other discounts or uncollectible accounts, or any other purpose. Sales of Licensed Product made other than in an arm's length transaction shall be deemed to have been made at the regular wholesale price for such Licensed Products.

**SECTION VI
(Advance and Guaranteed Minimum Royalties)**

Notwithstanding any other royalty payment requirements of this License Agreement, including those set forth above, Licensee shall pay to NYC & Company guaranteed minimum royalties in the amounts and on the dates set forth below:

Advance will be payable as follows:

Upon written notice from NYC & Company to Licensee of the commencement of the Term:

Five Thousand dollars (\$5,000)

The following total Guaranteed Minimum Royalties for January 1, 2017 through March 31, 2020 shall be payable, inclusive of the applicable Annual Advance set forth above:

On or before March 31, 2020: Forty Thousand Dollars (\$40,000)

For the avoidance of doubt, any amount accrued prior to January 1, 2017 will not be included in the Guaranteed Minimum Royalties. The calculation for the Guaranteed Minimum Royalties shall begin as of January 1, 2017.

All Guaranteed Minimum Royalty payments shall be nonrefundable and shall be made whatever the Net Sales of the Licensed Products have been or are for any of the License Years, and shall be applied to and credited as advances against Licensee's liability for royalties for each License Year for which the License Agreement is in effect. No carry over of excess earned royalty (over the Guaranteed Minimum Royalty) or deficiency of earned royalty (under the Guaranteed Minimum Royalty) into subsequent license periods within the term shall be allowed.

SECTION VII

(Royalty Payments, Accounting and Statements)

Licensee shall furnish to NYC & Company the following no later than forty-five (45) days after the end of each calendar quarter (beginning with the calendar quarter in which the initial shipment of Licensed Products covered by this License Agreement is made):

(a) complete and accurate statements in a format approved by NYC & Company and certified in writing to be accurate by an officer of Licensee, itemized by (a) product item number; (b) City Agency and/or specific trademark associated with such Agency (e.g., FDNY, NYPD) and showing the net number of units sold inclusive of returns, item description and Average Sales price of the Licensed Products sold by Licensee during the preceding quarter. Such statements shall be furnished to NYC & Company whether or not any Licensed Products have been sold during the preceding quarter; and

(b) payment of the earned royalty and/or guaranteed minimum royalty due from sales during the preceding quarter. In the event Licensee's earned royalty in a given quarter is less than the guaranteed minimum royalty, then payment shall include the difference between earned royalty and the guaranteed minimum royalty.

The receipt or acceptance by NYC & Company or the City of any statements furnished pursuant to this License Agreement or any royalties paid hereunder (or the cashing of any royalty checks paid hereunder) shall not preclude NYC & Company or the City from questioning the correctness of such statement or payment at any time. In the event any inconsistencies or mistakes are discovered in such statements or payments, they shall immediately be rectified and the appropriate payments made by Licensee. In the event of an overpayment by Licensee, Licensee may deduct such mutually verified overpayment from any earned royalty or guaranteed minimum royalty payment due with the next regular quarterly royalty statement and payment. In the event no further royalty payments would be forthcoming after discovery and mutual verification of the payment, then Licensee shall receive a refund of such overpayment within thirty (30) days after its written request for a refund is received by NYC & Company.

In the event that Licensee fails to make any payments, including, advances, guaranteed minimum royalty, earned royalty and audit findings, when such payments are due under this License Agreement, interest shall be charged at an annual rate of eighteen percent (18%), or the maximum rate allowed by law, whichever is lower. All payments made hereunder shall be in United States currency drawn on a United States bank. Licensee shall keep accurate books of account and records covering all transactions related to this License Agreement for at least six (6) years after termination of this License Agreement.

SECTION VIII

(Audit Rights)

The City or its authorized agent shall have the right during business hours upon forty-eight (48) hours' advance notice to examine and request copies of Licensee's books, records, and accounts and all other documents and materials in the possession or under the control of Licensee relating to the sale of the Licensed Product or this License Agreement to such extent as may be necessary to determine the accuracy or inaccuracy of any royalty statements submitted by Licensee to Licensor. Licensee shall segregate its records and agrees that such

audit may be used as a basis for settlement of charges under this License Agreement. The City may also at any time select any independent accounting firm to review Licensee's books, records and accounts, and to check shipments and verify the account (hereinafter referred to as the "Audit"). In the event that the Audit reveals any underpayment by Licensee to Licensor, Licensee shall remit payment for the amount shown to be due within ten (10) days, of receipt of official audit report plus a late charge in the amount of eighteen percent (18%) per annum, or the maximum rate allowed by law whichever is lower, on all amounts shown to be owing by Licensee. In the event that the Audit determines that Licensee has underpaid by an amount equal to five percent (5%) or more of the total amount shown to be due to Licensor for the period audited, Licensee shall reimburse Licensor or its agent for all costs and expenses of the Audit. In addition, if the discrepancy is an amount equal to five percent (5%) or more and a discrepancy or underpayment of 5% or more had been found in at least one prior instance, Licensor may terminate this License Agreement by giving Licensee notice within sixty (60) days after receipt of the audit report disclosing the discrepancy. Upon request of Licensee, Licensor shall furnish a copy of the Audit to Licensee and Licensee may object in writing to the Audit results within five (5) days of receipt of the Audit. Licensee shall retain all books of account and records relating to this License Agreement for at least six (6) years after the termination or expiration of this License Agreement, and any renewals thereof and Licensor's right to audit such records during the duration of this License Agreement and for six (6) years thereafter. 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.

SECTION IX (No Assignment)

This License Agreement is personal to Licensee and may not be assigned in whole or in part by Licensee without the prior written consent of the City, which may be withheld in the sole discretion of the City. Any attempted or purported assignment or other transfer, sublicense, mortgage or other encumbrance of this License Agreement by Licensee without the prior written approval of the City shall be null and void and grounds for immediate termination of this License Agreement by the City.

SECTION X (Trademark Ownership)

(a) Licensee agrees that by virtue of this License Agreement it does not and shall not claim any right, title, or interest in the Property or any part thereof (except the right to use them in accordance with this License Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Property and the validity of the trademarks and service marks that are part of the Property and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Property, to this License Agreement or to the validity of the Property and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any way impair the rights of the City with respect to such Property. Any violation of this paragraph shall constitute an immediate breach of this License Agreement and cause for immediate termination by the City.

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Property, including but not limited to reporting to the City any infringement or imitation of the Property of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Property in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Property, Licensee shall cooperate with the City and lend whatever assistance is necessary, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City, NYC & Company, or Licensee with respect to the use of the Property in connection with the Licensed Products, then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right

to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Property.

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Property or to discontinue use of the Property on the Licensed Products which are involved, if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party.

(e) Notwithstanding the foregoing to the contrary, in the event Licensee creates original logos/graphics pursuant to this License Agreement ("Original Graphics"), Licensor grants Licensee a perpetual free license to Licensee to use and/or adapt such Original Graphics provided and on condition they are disassociated with the Licensor or its related parties (including, but not limited to the City, the New York City Department of Small Business Services and/or NYC & Company) and the Property, and in no manner associate Licensor or its related parties (including, but not limited to the City, the New York City Department of Small Business Services and/or NYC & Company) and the Property with such usage nor imply the same.

SECTION XI (Goodwill)

(a) Licensee recognizes and acknowledges that the Property and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Property has acquired secondary meaning in the mind of the public. The Property shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this License Agreement immediately, upon written notice, in the event that any part of the Property is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Property is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this License Agreement shall terminate unless Licensee ceases and halts all such uses immediately.

(b) Licensee shall use the Property only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Property shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Property by virtue of any use it makes of the Property. Licensee shall not attempt to register the Property alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Property.

(c) Licensee agrees that it will apply the proper notations on all Licensed Products, tags, labels, package inserts, containers, packaging, advertising, promotional and display materials or the like containing the Property as set forth in Exhibits 2 and 3 hereto.

(d) Any art work or other materials conceived under or resulting from this License Agreement, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered "work made for hire" within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by

the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect worldwide. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Property, Licensee shall first obtain the City's written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City. For the avoidance of doubt, other than as set forth herein, this paragraph shall not transfer any right, title or interest in the marks, logos and/or graphics or other intellectual property of Licensee not expressly created for, or otherwise adapted for use with, the Licensed Property or Licensor hereunder.

(e) Licensee acknowledges that, from time to time and without notice to Licensee, it may be necessary or desirable for the City to modify certain elements of the Property in connection with the Licensed Products, to include additional elements to the Property, or to discontinue use of some or all of the elements of the Property. Accordingly, the City does not represent or warrant that the Property or any elements thereof will be maintained or used in any particular fashion. Any new elements or modifications to existing elements used by the City following the execution of this License Agreement may be included in, or deleted from (as applicable), the Property at the sole discretion of the City. Licensee agrees to comply with the City's written request to include such elements as, or to delete such elements from, the Property within a reasonable period of time from Licensee's receipt of such written request.

(f) The City shall have the right, but shall not be under any obligation, to use the Property, Licensed Products, and/or the name of Licensee so as to give the Property, and/or the Licensed Products full and favorable prominence and publicity. The City shall be under no obligation whatsoever to use or continue using the Property, the Licensed Products and/or the name of Licensee in connection with its products or services.

SECTION XII (Termination Rights)

Without prejudice to any other rights, the City has the right to terminate this License Agreement upon written notice to Licensee, effective immediately, at any time that any of the following occurs:

(a) If Licensee shall cease to manufacture and sell the Licensed Products for any reason (except for a cause beyond the control of Licensee, including "acts of God"), for a period of three (3) consecutive months or more.

(b) If Licensee shall fail to make any payment due hereunder or to deliver any of the statements herein referred to, or breaches any other obligation hereunder, and if such default shall continue for a period of thirty (30) days after written notice of such default is sent by the City to Licensee. Licensee shall pay interest on the unpaid balance thereof from and including the date such payment becomes due until the date the entire amount is paid in full at a rate equal to the prime rate being charged in New York, New York, by Citibank as of the close of business on the date the payment first becomes due plus five percent (5%) (or the maximum rate which legally can be paid by Licensee, if lower).

(c) If Licensee defaults on any obligation that is secured by a security interest in any Licensed Product, Licensee shall immediately and automatically no longer have the right to sell or otherwise transfer Licensed Products or otherwise use the Property until it notifies the City of the occurrence of such default on any such obligation, and Licensor notifies Licensee that Licensor has elected to waive its right to terminate this License Agreement.

(d) If Licensee makes any assignment for the benefit of creditors, or files any petition under Title 11, United States Code, or files in bankruptcy or is adjudicated as bankrupt or insolvent, or if any trustee in bankruptcy or insolvency is appointed under the laws of the United States or of any State. No assignee for the benefit of creditors, custodian, receiver, trustee in bankruptcy, sheriff or any other officer of the court or official charged with taking over custody of Licensee's assets or business may continue this License Agreement or exploit the Property if this License Agreement terminates pursuant to this paragraph. Notwithstanding, if, pursuant to

Title 11, United States Code, or any amendment or successor thereto, a trustee in bankruptcy or Licensee, as debtor, is permitted to assume this License Agreement and does so and, thereafter, wishes to assign this License Agreement to a third party, and that assignment complies with Title 11 of the United States Code, the trustee or Licensee shall notify Licensor of same. Said notice shall set forth the name and address of the proposed assignee, the proposed consideration for assignment and all other relevant details of the assignment. Such notice shall be deemed to grant the Licensor the option to have this License Agreement assigned to such assignee for such consideration, or its equivalent in money and upon such terms as specified in the notice. The option may be exercised by written notice to the trustee or Licensee by Licensor within fifteen (15) days from Licensor's receipt of the notice, or within such shorter time as may be deemed appropriate by the court in a bankruptcy proceeding. If Licensor fails to give notice to the Licensee or trustee within said period, the Licensee or trustee may execute the assignment to the entity referred to in the notice for the consideration and on the terms specified therein. Nothing contained herein shall be deemed to preclude or impair any rights Licensor may have as a creditor in any bankruptcy proceeding.

(e) If Licensor determines that this License Agreement should be terminated without cause.

(f) If Licensee violates the non-assignment or change in controlling interest provisions of this License Agreement.

(g) If Licensee fails to sell Licensed Products within six months of the date of this License Agreement.

Upon termination or expiration of this License Agreement, except as otherwise provided in Section XIII, during the sell-off period, all royalties earned and all applicable guaranteed minimum royalties shall become immediately due and payable.

SECTION XIII (Post Termination)

Upon the expiration of this License Agreement (but not upon termination pursuant to Section XII), Licensee shall be permitted ninety (90) days to sell its remaining inventory of Licensed Products. Sales under this section shall require payment of royalties and all other duties and obligations of Licensee under this License Agreement shall remain in force during the sell off period. At the end of such sell-off period, or upon termination pursuant to any other provision this License Agreement Licensee shall immediately discontinue manufacture, promotion, advertisement, and sale of Licensed Products. In addition, upon expiration or termination of this License Agreement for any reason, Licensee shall deliver to Licensor, or destroy or alter under Licensor's supervision, all molds, dies, prints or other equipment used to manufacture the Licensed Products and Promotional Materials so that such equipment no longer can be used to manufacture products or promotional materials bearing, displaying, or otherwise including the Property and shall provide Licensor with a letter confirming depletion or destruction of such inventory. Licensee acknowledges and agrees that its failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon expiration or termination of this License Agreement will result in immediate and irreparable harm to Licensor. Licensee further acknowledges and admits that Licensor has no adequate remedy at law for Licensee's failure to cease manufacture, sale, advertising, or promotion of the Licensed Products upon termination or expiration of this License Agreement, except as expressly provided for above. Licensee acknowledges and admits that, in the event of any such failure by it to cease manufacture, sale, advertising, or promotion of the Licensed Products, Licensor shall be entitled to equitable or injunctive relief against Licensee's failure, in addition to any and all other remedies at law that are available to Licensor.

SECTION XIV (Samples and Approvals)

(a) The Licensed Products shall meet or exceed the requirements imposed by any and all laws, regulations, government standards, guidelines, manufacturing codes, rules, and the like applicable to the Licensed Products. Without limiting the foregoing, no Licensed Products shall be manufactured from any flammable, explosive, toxic, or otherwise inherently dangerous materials or substances, nor designed so as to constitute any

inherent danger to the consumer. Further, Licensee agrees that the Licensed Products shall be of a standard of quality at least as high as that of the product samples initially approved by Licensor so as to be suited to their exploitation and to the protection and enhancement of the Property and the goodwill pertaining thereto.

(b) The Licensed Products shall be manufactured in accordance with the manufacturing specifications, protocol, safety, and quality standards that have been reviewed and approved in writing by Licensor ("Specifications"), which, once approved, shall be deemed to be a part of this License Agreement. Licensor may amend such Specifications from time to time and shall provide Licensee with reasonable notice of such changes so that the Licensed Products may be adjusted to meet such changed quality standards, if required.

(c) The Specifications shall include at least the following information (and other information which Licensor requests regarding particular Licensed Products): (i) a description of the materials used in the Licensed Products, the materials' dimensional tolerances, performance and durability requirements, specifications that enable the materials to meet governmental regulatory requirements (if any) and such other appropriate information that will accurately describe the Licensed Products and their expected performance during use by the consumer; and (ii) a quality assurance plan that is used to assure the continuing acceptable quality of the Licensed Products. The plan shall include a description of the quality controls observed in the Licensed Products' manufacture, and the procedures followed to audit and verify continued quality and conformance to specifications of the Licensed Products, as well as applicable laws and regulations.

(d) The Specifications shall be provided to Licensee's suppliers and manufacturers of the Licensed Products, and Licensee shall require its suppliers and manufacturers to comply with the Specifications. Licensor shall have the ability to inspect Licensee's facilities and warehouses and those of its suppliers and manufacturers at any time with or without prior notice to assure Licensee's compliance with this paragraph.

(e) Licensee agrees to submit, at the Licensor's request and at no cost to Licensor (i) initial sketches and/or design concepts; (ii) finished artwork or final proofs; (iii) prototypes or pre-production samples; and (iv) a minimum of one (1) and maximum of twelve (12) final production samples (the "Samples") of the Licensed Products (and any variations thereof), as well as initial samples of subsequent production run(s) if such subsequent production run(s) vary in any manner from prior runs, for Licensor's inspection, testing, analysis and approval prior to any sale or shipment of the Licensed Products. If requested by Licensor, such samples (together with the Specifications) shall be submitted by Licensee to an independent laboratory or other test facility approved in writing by Licensor. All costs associated with such inspection, testing and analysis shall be borne by Licensee, and the results of such inspection, testing and analysis shall be submitted to Licensor for its approval. Licensee shall also provide a reasonable number of samples of the Licensed Product to Licensor in accordance with this paragraph at reasonable intervals of no less than once every twelve (12) months during the Term, with such additional inspection, testing and analysis as Licensor may require in the manner set forth in this paragraph for purposes of product review and quality control.

(f) Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) days of receipt of Samples of the Licensed Products. Any Samples not expressly approved shall be deemed disapproved. If Licensor does not approve the Samples of the Licensed Products, the reasons for disapproval shall be communicated to Licensee. After the Samples are approved pursuant to this paragraph, Licensee shall not depart therefrom in any material respect without Licensor's prior written consent, and Licensor shall not withdraw its approval of the Samples except for good cause.

(g) Licensee shall adhere to Licensor's graphic and packaging standards and guidelines in the use of the Property and shall use the materials depicted in Exhibit 3 hereto, which have been approved by Licensor. To the extent that Licensee wishes to amend or alter the graphics depicted in Exhibit 3, Licensee shall submit to Licensor for Licensor's prior written approval all tags, labels, package inserts, containers, packaging, advertising, promotional, display or sales materials or the like containing or referring to the Property. Licensor shall use reasonable efforts to communicate its written approval or disapproval within forty (40) business days of its receipt of items under this paragraph. Any materials not specifically approved shall be deemed disapproved. If Licensor

does not approve an item under this paragraph, the reason for such disapproval shall be communicated to Licensee.

(h) Licensee shall at its own cost handle all product warranty and/or guarantee issues, responses and compliance requirements, as well as all consumer inquiries or complaints (collectively, "Consumer Inquiries") relative to any of the Licensed Products. Licensor shall forward to Licensee for handling any and all such Consumer Inquiries that Licensor receives. Upon request by Licensor, Licensee shall advise Licensor in writing of the manner in which it handled any Consumer Inquiry. In addition, Licensee shall provide Licensor with a quarterly report (submitted with royalty reports pursuant to Section VII hereto) containing all data and information regarding Consumer Inquiries handled during the quarter.

(i) Licensee shall immediately advise Licensor of any product recall considerations or deliberations and provide Licensor with the right to attend and have input into such deliberations. Licensor shall have the ability to declare a product recall of such Licensed Products as Licensor determines in good faith after consulting with Licensee that any product recall is necessary for reasons of public health, safety, welfare or damage to reputation or good will. Licensee shall bear any and all costs related to any product recall of the Licensed Products using the Property whether voluntary, required by a governmental authority or the Licensor. Licensee shall have in place a comprehensive lot tracking program, starting with raw materials, to ensure such recall effectiveness.

(j) Licensee agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term "child" shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Licensee agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products. Licensee shall perform all obligations under this License Agreement in accordance with applicable provisions of federal, state and local laws, rules and regulations as are in effect from time to time.

SECTION XV (Purchase Rights)

Licensor shall have the right to purchase from Licensee, at Licensee's lowest available wholesale price, such number of royalty-free units of any Licensed Product as Licensor may from time to time specify in a notice to Licensee.

SECTION XVI (Indemnification)

Licensee hereby agrees to be solely responsible for and to indemnify, defend and hold harmless Licensor, NYC & Company, their affiliates and respective officers, agents, and employees, and to hold each of them harmless from and against any claims, judgments, demands, causes of action, damages, losses, costs and expenses, including but not limited to reasonable attorneys' fees, which may be made or asserted by third persons in connection with the manufacture, design, sale, offering for sale, advertising, promotion or use of the Licensed Products, including those based on Licensee's use of the Property authorized by this License Agreement. Such indemnification shall further extend to Licensee's failure to comply with the terms of this License Agreement and Licensee's unauthorized use of any patent, process, idea, method or device, or unfair trade practice, false advertising, trademark, copyright infringement or the like in connection with the manufacture, design, sale, advertising, promotion or use of the Licensed Products. Licensee expressly agrees that its obligations hereunder shall survive and continue beyond any termination or expiration of this License Agreement. Licensor hereby agrees to indemnify, defend and hold harmless Licensee from and against any claims, judgments,

demands, causes of action, damages, losses, costs and expenses which may be brought by a third party against Licensee to the extent caused by the Licensor's gross negligence or willful misconduct.

SECTION XVII
(Existing Licenses)

Licensee hereby acknowledges that Licensor has previously granted and may continue to grant licenses to third parties for the use of the Property

SECTION XVIII
(Insurance)

Licensee agrees to carry commercial general liability insurance, including but not limited to product liability coverage, with insurer(s) having an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, and licensed to transact business where such insurance is issued, in an amount of at least one million dollars (\$1,000,000) per occurrence, and two million dollars (\$2,000,000) aggregate, and to include NYC & Company and the City, together with their officials and employees, as additional insureds under such policy with coverage at least as broad as the most recent editions of both Insurance Services Office (ISO) Form CG 2026 and ISO Form CG 2037. Each year such insurance is required, Licensee shall provide NYC & Company and the City with a Certificate of Insurance, accompanied by either a duly executed "Certification by Broker" in the form required by the Licensor, or certified copies of all policies referenced in such Certificate of Insurance, evidencing the required limits of coverage and identifying NYC & Company and the City as additional insureds with coverage pursuant to or at least as broad as the most recent editions of both ISO Form CG 2026 and ISO Form CG 2037 under all such policies. Such insurance shall be maintained for at least six (6) years after the last date of sale by Licensee of any Licensed Product. In the event that Licensee fails at any time to carry insurance as required herein, Licensee shall immediately notify Licensor thereof and Licensor shall have the right to terminate this agreement immediately. Whenever notice of occurrence, claim or suit to an insurance company is required under any such policy, Licensee shall provide timely notice thereof on behalf of both NYC& Company and the City and shall promptly send a copy of such notice(s) to both NYC & Company and the City. The copy of such notice to NYC& Company shall be sent to the address set forth in section XXII below and the copy to the City shall be sent to c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007. The existence of such insurance shall in no way limit Licensor's or NYC & Company's rights under this agreement, at law or in equity, including the right to be indemnified as set forth in this agreement.

SECTION XIX
(Governing Law)

This License Agreement shall be construed in accordance with the laws of the State of New York, notwithstanding conflicts of laws principles. By execution of this License Agreement, Licensee consents to submit to the jurisdiction of the courts of the State of New York located in New York City and the federal courts located therein.

SECTION XX
(No Partnership or Joint Venture)

Nothing in this License Agreement or in the course of performance under this License Agreement shall be construed to constitute a partnership or joint venture. Licensee shall have no right to obligate or bind Licensor in any manner whatsoever (nor shall Licensee hold itself out to any third party as being so authorized) and nothing contained herein nor in the course of performance hereunder shall give or is intended to give any right of any kind to any third party.

SECTION XXI
(No Manufacturers, Importers, or Sublicensees)

Licensee shall provide Licensor with a list of the names and addresses of Licensee's manufacturers, importers and distributors and will notify Licensor of any change in such list. From time to time, Licensor may request that Licensee provide the names of its designers, raw material suppliers and/or authorized importers of the Licensed Products, and Licensee agrees to provide such information upon the request of Licensor. Licensee may sublicense rights under this License Agreement ("Sublicense") only with the prior, written approval of the Licensor, which may be withheld in Licensor's sole discretion. For the avoidance of doubt, manufacturers, importers and distributors are not considered a Sublicense hereunder. Each and every Sublicense granted under this License Agreement shall contain such provisions as Licensor may require, including without limitation that the Sublicense shall be assignable to the Licensor upon the written demand of the Licensor.

SECTION XXII
(Notices)

All notices required to be given under the terms of this License Agreement, or which either party hereto may desire to give to the other, shall be in writing and sent by mail to the following addresses:

If to Licensor:

NYC & Company
810 Seventh Ave.
New York, NY 10019
ATTN.: Bryan X. Grimaldi
Chief Operating Officer & General Counsel

With a copy to:

New York City Department of Small Business Services
110 Williams Street, 2nd Floor
New York, NY 10038

Additional copy to:

New York City Law Department
100 Church Street, 6th Floor
New York, NY 10007
ATTN.: Katherine Winningham

If to Licensee:

Only NY
510 West 123rd St. #51
New York, NY 10027
Attn: Micah Belamarich

SECTION XXIII
(Confidentiality)

Except as otherwise required by law, Licensee agrees to, and shall cause its affiliates, agents, representatives, accountants, employees, officers and directors to: (i) treat and hold as confidential all information, reports or data, prepared, assembled, used or that Licensee comes to obtain under this License Agreement, and (ii) prior to publication, not disclose or provide access to such confidential information to any individual or organization without the prior written approval of Licensor. In the event that Licensee or Affiliate, agent, contractor, representative, employee, officer, or director of Licensee, becomes legally compelled to disclose confidential information of Licensor, Licensee must provide Licensor with prompt written notice of such requirement so that Licensor may seek a protective order or other remedy or waive compliance with this Article XXIII. In the event that such protective order or other remedy is not obtained, or compliance with this Article XXIII is waived, Licensee agrees to furnish only that portion of such confidential information which is legally required to be provided and exercise its reasonable best efforts to obtain assurances that confidential treatment will be accorded such information. Notwithstanding the foregoing, this Article XXIII shall not apply to any information that, at the time of disclosure, (i) was available publicly and not disclosed in breach of this License Agreement, (ii) was known to the receiving party without breach of an obligation of confidentiality or (iii) was learned from a third party who was not under an obligation of confidentiality. The parties agree and acknowledge that remedies at law for any breach of the obligations under this Article XXIII may be inadequate and that in addition thereto Licensor and NYC & Company are entitled to seek equitable relief, including injunction and specific performance, in the event of any such breach.

In the event that Licensee believes that specific information it submits to Licensor or NYC & Company pursuant to this Agreement should be treated confidentially by Licensor or NYC & Company, Licensee shall so advise the party receiving the information in a writing identifying the specific information. Licensor and NYC & Company agree to treat information so designated as confidential proprietary information of Licensee, consistent with legal requirements.

The City or NYC & Company may be required, pursuant to the New York State Freedom of Information Law ("FOIL") (New York Public Officers Law Section 84 et seq.), to disclose information, or any portion thereof. In the event that disclosure is requested by a third party of materials designated by Licensee as confidential or proprietary information in accordance with this Section, the Licensor or NYC & Company will provide notice to Licensee and shall consult with Licensee to evaluate the extent to which such information may be withheld from disclosure under the provisions of FOIL.

Consistent with the requirements of FOIL, the final determination regarding disclosure shall be made by Licensor or NYC & Company in their sole discretion. In the event that Licensor or NYC & Company determines in its discretion that information may not be withheld, Licensor or NYC & Company, as appropriate will provide Licensee with prompt notice of intent to disclose in order that Licensee may invoke any rights or remedies to prevent disclosure to which it believes it may be entitled under the law.

Licensee expressly acknowledges and agrees that neither the Licensor nor NYC & Company will have any obligation or liability to Licensee in the event of disclosure of materials, including materials designated by Licensee as proprietary information, provided such disclosure is in accordance with this Section.

SECTION XXIV (Investigations)

A. The parties to this License Agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York or City of New York 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. (i) 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 of New York, the State of New York, 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 of New York, or any public benefit corporation organized under the laws of the State of New York, or;

(ii) 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 of New York 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 of New York, the State, or any political subdivision thereof or any local development corporation within the City of New York, then;

C. (i) 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 should attach for the failure of a person to testify.

(ii) 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 of New York 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:

(i) 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 of New York; and/or

(ii) The cancellation or termination of any and all such existing City of New York contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, 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 of New York incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by Licensor.

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 (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate:

(i) 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.

(ii) 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.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City of New York.

(iv) 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 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 C(i) 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. (i) The term “license” or “permit” as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) 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 or employee.

(iii) The term “entity” as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City of New York, or otherwise transacts business with the City of New York.

(iv) 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 Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement 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 other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by Licensee, or affecting the performance of this License Agreement.

SECTION XXV (Miscellaneous)

A. No action at law or proceeding in equity by Licensee against Licensor or NYC & Company shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee has strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

B. No action shall lie or be maintained against Licensor or NYC & Company by Licensee upon any claims based upon this License Agreement unless such action shall be commenced within six (6) months after the date of final payment hereunder, or within six (6) months of the termination or conclusion of this License Agreement, or within six (6) months after the accrual of the cause of action, whichever first occurs

C. In the event any claim is made or any action is brought against Licensor or NYC & Company in any way relating to the Agreement herein on the basis of Licensee’s actions and in each case by a third party, Licensee shall diligently render to Licensor and NYC & Company without additional compensation any and all assistance which Licensor and NYC & Company may reasonably require of Licensee, subject to reimbursement for Licensee’s actual, reasonable, pre-approved expenses.

D. Either party shall report to the other party in writing within ten (10) working days of the date such party becomes aware of the initiation by or against it of any legal action or proceeding in connection with or relating to this License Agreement.

E. No claim whatsoever shall be made by Licensee against any officer, agent, or employee of Licensor or NYC & Company for, or on account of, anything done or omitted in connection with this License Agreement.

F. This License Agreement may be executed in two copies, each of which shall be deemed an original. This License Agreement contains the entire understanding between the parties with respect to the subject matter hereof and replaces and supersedes all prior agreements and understandings between the parties. This License Agreement may only be amended by a writing executed by all parties.

G. Headings used herein are for convenience only and shall not be considered part of this License Agreement. This Agreement has been negotiated by the parties hereto. No provision of this License Agreement shall be strictly construed against the drafter of the language concerned, but shall be interpreted applying the most reasonable interpretation under the circumstances, giving due consideration to the intentions of the parties at the time of contracting.

H. Licensee represents and warrants to Licensor that: (i) it is duly organized and validly existing under the laws of the State of New York, (ii) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; (iii) its execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action on its part; (iv) once executed and delivered, this Agreement will constitute its legal, valid and binding obligation, enforceable in accordance with its terms; (v) there are no legal or arbitral proceedings or any proceedings by or before any governmental or regulatory authority or agency, now pending or (to the knowledge of Licensee) threatened against Licensee which, if adversely determined, could have a material adverse effect on the financial condition, operations, business or prospects of Licensee; (vi) the execution and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under, the charter, by-laws or partnership agreement, as applicable, of Licensee, or any applicable law or regulation, or any order, writ, injunction or decree of any court or governmental authority or agency, or any agreement or instrument to which Licensee is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument, or result in the creation or imposition of any lien upon any of the revenues or assets of Licensee pursuant to the terms of any such agreement or instrument.

I. Licensor represents and warrants to Licensee that: (i) subject to applicable law, it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement; and (ii) to the best of Licensor's knowledge, the execution of and delivery of this Agreement and any related agreement to which it is party, the consummation of the transactions herein and therein contemplated and compliance with the terms and provisions hereof and thereof, will not conflict with or result in a breach of, or require any consent under any agreement or instrument to which Licensor is a party or by which it is bound or to which it is subject, or constitute a default under any such agreement or instrument.

J. Each of the parties hereto shall use all reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable law, and to execute and deliver such

documents and other papers, as may be required to carry out the provisions of this License Agreement and consummate and make effective the transactions contemplated by this License Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first above written.

NEW YORK CITY DEPARTMENT OF SMALL BUSINESS SERVICES

By:

Its:

Date of Signature: _____

APPROVED AS TO FORM
CERTIFIED AS TO LEGAL AUTHORITY:

Acting Corporation Counsel

(Licensee Name)

By:

Its:

Date of Signature: _____

Exhibit I
The Property

Trademarks of the City of New York

Trademarks



Exhibit 2

Licensed Products

1. Adult & Children's Apparel
2. Accessories

Exhibit 3

Product Labels and Graphics

City Seal Hologram

All products must include a permanent copyright notice and trademark designation etched on the back of the product. It must read “© 2017[or current year] City of New York. All Rights Reserved.”

If too little room is available to accommodate this etching, individual decisions will be made in consultation with NYC & Company, which shall have the right of prior approval over the final version.

All packaging must include at least the copyright notice “© 2017 [or current year] City of New York. All Rights Reserved.”

Exhibit 4 Quality Control Guidelines

- 1.** All licensed products and related materials associated with NYC & Company's licensing program, including but not limited to packaging, print ads, advertising initiatives, point of purchase displays, story boards, scripts, molds, brochures, videos, DVDs, labels, hangtags, catalogs, sales sheets and all collateral materials must be submitted to NYC & Company for approval prior to any production.
- 2.** Each product submitted for approval must, at every stage, be accompanied by a completed approval form (see "Sample Product Approval Form").
- 3.** All prototypes of any items which utilize New York City ("City") trademarks must be submitted at each stage of production. Based on written approval, Licensee may proceed to the next step.
- 4.** Contracts will contain NYC & Company's entire sample submission/ approval process. The following brief steps will be required for all product submissions:
 - Initial sketches and/ or design concepts
 - Finished artwork or final proofs
 - Prototypes or pre-production samples
 - Production samples
- 5.** Licensees are required to submit all licensed products in each style and variation.
- 6.** Product submissions shall be reviewed and evaluated for:
 - Accuracy of logo representation
 - Proper use of Pantone colors
 - Proper use of trademark designations
 - General appearance and quality of product
 - NYC & Company policies and standards
- 7.** All approvals granted are conditioned upon FULL EXECUTION OF THE LICENSING AGREEMENT AND TIMELY PAYMENTS, or with the prior written permission of NYC & Company
- 8.** Each logo is distinctive and therefore must be used separately on licensed product and collateral materials. Logos may not be reversed and/ or turned to appear in an opposite direction.
- 9.** All hard goods must include a permanent copyright notice and trademark designation etched on the bottom or other approved location on the product.
- 10.** Licensees must indicate the size of, and the amount of times, they intend to utilize City logo(s), third party logo(s) and/or corporate identification(s) in relationship to the size of the City logo prior to the licensee's logo use on products.
- 11.** All products are required to utilize holograms, hangtags and/ or labels purchased from the City's exclusive on-product authentication products supplier.
- 12.** Licensee agrees to use the following notice, ™, ® or ©, as specified by the Licensor, in connection with the first most prominent usage of the Property on all Licensed Products, hang tags and packaging: "All New York City logos and marks depicted herein are the property of New York City and may not be reproduced without written consent. © 2017 [or other year of initial publication]. City of New York. All rights reserved." Licensee agrees to use the following notice, ™, ® or ©, in connection with all displays, advertising, sales brochures, instruction manuals and other promotional materials for each Licensed Product (hereinafter the "Promotional Materials"):

“All New York City logos and marks depicted herein are the property of the City of New York and may not be used or reproduced without prior written consent. © 2017 [or other initial year of publication]. City of New York. All rights reserved.” If impracticable in a particular situation, a shortened version of such notices may be used with Licensor’s prior written approval.

13. Anytime a new factory is used to produce licensed merchandise, the licensee must have the vendor sign the City’s Ethical Standards Form (see attached). Any product approval form being submitted must list the factory name and factory contact information (foreign or domestic) where production of that particular item will occur. No product approvals will be given without this information.

Exhibit 5

Ethical Standards for the City of New York

The City of New York (“City”) is committed to conducting business in an ethical and responsible manner in all countries, and requires the same from all of its business partners. While the City recognizes that there are different legal and cultural environments in which factories operate throughout the world, these Ethical Standards for Vendors (“Standards”), set forth the basic minimum requirements all factories must meet in order to do business with the City.

These Standards apply to City rights holders of specific licensed products (“Licensees”) and factories that produce goods for the City (“Licensed Products”), including manufacturers, contractors and subcontracted manufacturers (hereinafter collectively referred to as “Vendors”). Under the agreement in place with each Licensee, the City has the right to approve all Vendors of Licensed Products. No Vendor will be approved and no currently approved Vendor will be retained who does not comply with these Standards. The City strongly encourages Vendors to exceed these Standards and promote best practices and continuous improvement throughout their factories.

Legal Requirements:

The City requires that its Vendors must operate in full compliance with all applicable laws and regulations of the countries in which they manufacture and compliance with all local environmental laws applicable to the workplace.

Forced Labor:

The City requires that its Vendors not use forced labor, including, but not limited to, prison, indentured, bonded or involuntary labor.

Child Labor:

Vendor agrees not to use child labor in the manufacture of or otherwise in connection with any Licensed Products. The term “child” shall refer to a person younger than the local legal minimum age for employment or the age for compelling compulsory education, but in no case shall any children younger than fifteen (15) years of age (or fourteen (14) years of age where local law allows) be used to manufacture, package or sell the Licensed Products. In addition, Vendor agrees to comply with all applicable minimum wage, overtime, occupational safety and health and environmental protection laws in the manufacture and packaging of Licensed Products.

Harassment or Abuse:

The City requires that its Vendors treat their employees with respect and dignity. Vendors must provide a work environment free of harassment, abuse or corporal punishment in any form. In addition, Vendors will not use monetary fines as a disciplinary practice.

Discrimination:

The City requires that its Vendors ensure that employment, including but not limited to hiring, salary, benefits, advancement, discipline or termination, is based solely on ability and not on any personal characteristics.

Health and Safety:

The City requires that its Vendors provide a safe and healthy working environment in accordance with applicable local law to prevent accidents and injury arising out of, linked with, or occurring in the course of work or as a result of the operation of employer facilities. Vendors who provide residential facilities must ensure these facilities are also safe and healthy in accordance with applicable local laws.

Freedom of Association:

The City requires that its Vendors recognize and respect the legal right of employees to freely associate. Employees should not be subject to intimidation or harassment as a result of the peaceful exercise of their legal right to join or to refrain from joining any organization.

Compensation and Benefits:

The City requires that its Vendors pay employees at least the minimum compensation required by local law, and to provide all legally mandated benefits. In addition to their compensation for regular hours of work, employees shall be compensated for overtime hours at such premium rate as is legally required or, in those countries where such laws do not exist, at a rate at least equal to their regular hourly compensation rate.

Hours of Work:

The City requires that its Vendors ensure that, except in extraordinary business circumstances, on a regularly scheduled basis, employees shall (i) not be required to work more than the lesser of (a) sixty (60) hours per week or (b) the limits on regular and overtime hours allowed by the law of the country of manufacture, and (ii) be entitled to at least one day off in every seven day period.

Communication:

The City requires that its Vendors take appropriate steps to ensure that the provisions of these Standards are communicated to employees.

Monitoring and Compliance:

The City requires that its Vendors maintain on file all documentation necessary to demonstrate compliance with the City's Standards. Vendors must allow the City and its designated agents (including third parties) to engage in announced and unannounced monitoring visits, including confidential employee interviews.

City Vendors are required to take necessary corrective actions to promptly remediate any noncompliance. The City reserves the right to ultimately terminate its business relationship and/or cancel existing orders with any Vendor who is unwilling or unable to comply with these Standards.