



## Hudson River Park Trust

### **L4966 – Pier 84 Seasonal Mobile Food Carts in Hudson River Park**

#### **Addendum No. 1**

June 7, 2018

The terms and conditions of the RFP shall remain otherwise unchanged except previously amended and as specifically provided by this Addendum No. 1. The RFP is amended to include the following:

1. Pier 84 Mobile Food Cart Concession Agreement

**HUDSON RIVER PARK TRUST  
PIER 84 MOBILE FOOD CART CONCESSION AGREEMENT**

This concession agreement (“Concession Agreement”) is dated as of June [XX], 2018 (“Commencement Date”) and entered into between HUDSON RIVER PARK TRUST (the “Trust”), a New York State public benefit corporation having its principal place of business at 353 West Street, Suite 201, New York, NY 10014, and [XXXXXXXX], (“Concessionaire”) having its principal place of business at [XXXXXXXX].

**WHEREAS**, the Trust is a New York State public benefit corporation, created and operating pursuant to the Hudson River Park Act, Chapter 592 of the Laws of 1998 of the State of New York, as amended (the “Act”).

**WHEREAS**, pursuant to the Act, the Trust is responsible for development, operation and maintenance of the Hudson River Park (“Park”), including Pier 84; and

**WHEREAS**, Concessionaire wishes to use and occupy a portion of Pier 84 to operate and maintain a mobile food cart concession (the “Pier 84 Mobile Food Cart Concession”) and the Trust wishes to grant such concession.

**NOW, THEREFORE**, the Trust grants the Pier 84 Mobile Food Cart Concession to Concessionaire, subject to the following covenants and conditions:

**1) Premises:**

The area designated for the use and occupancy by Concessionaire consists of the following spaces at Pier 84, located at West 44<sup>th</sup> Street in Hudson River Park as depicted in Exhibit A annexed hereto and made a part hereof (the “Premises”):

- a) Two Mobile Food Carts (which may be larger food processing carts) in the western outdoor area adjoining the West 44<sup>th</sup> Street Park Building at Pier 84 (the “Western Area”);
- b) Two Mobile Food Carts in locations as approved by the Trust;
- c) A trash room of approximately 86 square feet; and
- d) Non-exclusive use of public seating in the Western Area adjoining the West 44<sup>th</sup> Street Park building.

**2) Purpose and Use:**

- a) Concessionaire may enter upon, occupy and use the Premises to operate the Pier 84 Mobile Food Cart Concession to the extent and for the purposes specifically authorized under this Concession Agreement. Concessionaire’s occupancy and use of the Premises

shall be solely to operate and maintain the Pier 84 Mobile Food Cart Concession for the sale of food, snacks, bottled water and assorted non-alcoholic beverages, and other such items consistent with the menu and price list (“Menu & Price List”) attached hereto as Exhibit B.

- b) The Concessionaire shall operate the Pier 84 Mobile Food Cart Concession daily, from June [XX], 2018 to September 30, 2018 (or to October 31, 2018, if the Concessionaire proposes and the Trust approves the Extension Period). The minimum daily operating hours shall be 11:00 AM to 6:00 PM. Any change in daily hours of operation must be submitted in writing, and will be subject to approval by the Trust.
- c) Concessionaire shall operate four carts, either pushcarts or a processing carts (herein collectively referred to as “Mobile Food Cart(s)”) on Pier 84 in accordance with the following guidelines:
  - (i) Pushcarts shall be manually propelled carts or barrows which are only for the sale of pre-packaged foods or foods which require limited preparation. Pushcarts may not be more than 6.5 feet long and 3.5 feet wide, including all handles, extensions, and protuberances. If the unit is designed so that the operator stands within the unit, the width of the unit, including its wheels, axles, and other appurtenances, may not exceed 4.5 feet.
  - (ii) Processing carts shall be limited in size to maximum of 10’ in length and are for the sale of foods that require cooking or any other treatment such as slicing, mixing, packaging, or any other preparation that exposes the food to possible contamination.
  - (iii) The designs and color for the Mobile Food Carts, and any signage and umbrellas, canopies, or other equipment and/or elements maintained with the carts shall be subject to the review and reasonable approval of the Trust.
  - (v) Each Mobile Food Cart must be securely stored at the Premises or taken off-site at the end of each day. Mobile Food Carts may, with the Trust’s approval, remain overnight on the Premises, with appropriate security procedures at the Concessionaire’s sole risk. Mobile Food Carts may be stored outdoors or, if space is available and with the prior written approval of the Trust, within the West 44<sup>th</sup> Street park building. No cleaning of Mobile Food Carts may take place within the West 44<sup>th</sup> Street park building.
  - (vi) The Concessionaire shall obtain a Department of Health (DOH) Vendor License for each person designated as an operator of a Mobile Food Cart and a DOH Mobile Food Vending Unit Permit for the Mobile Food Carts.

- d) Concessionaire shall purchase, supply, or otherwise obtain all equipment, including the Mobile Food Carts necessary for the operation of this concession at the Concessionaire's sole cost and expense.
- e) All food and beverage items, as well as prices, are subject to approval by the Trust (which approval shall be granted if reasonable and similar to comparable venues). Concessionaire's initial price list is provided in the attached Exhibit B. The Menu, approved by the Trust, shall be prominently displayed at the Pier 84 Mobile Food Cart Concession at all times.
- f) Concessionaire shall not sell non-food or beverage items, unless approved by the Trust.
- g) The following is prohibited at or from the Pier 84 Mobile Food Cart Concession: product brand or sponsorship advertising; the sale of food and/or beverages in glass containers; the sale of cigarettes, cigars, any other tobacco products; the sale of alcoholic beverages; and the use of polystyrene packaging or food containers.
- h) Concessionaire shall manage all administrative, hiring, staffing, payroll needs, etc. associated with the Pier 84 Mobile Food Cart Concession. Concessionaire affirms that neither it nor its employees are agents or employees of the Trust.
- i) Concessionaire's employees shall be required to wear neat, appropriate attire at all times.
- j) Concessionaire's employees and customers shall have non-exclusive use of the public restroom located directly to the south of the Premises. The hours of the public restroom upon the Commencement Date is 8:00 AM to 12:00 AM daily. The hours are subject to change, provided the Trust gives prior notice to Concessionaire.
- k) Concessionaire shall not block or otherwise obstruct other Park areas without the express written consent of the Trust.
- l) Concessionaire shall use its best efforts to ensure that its use and occupancy of the Premises does not impair, disturb or interfere with the use, occupancy, and/or enjoyment of the Park by the Trust, any of its other Concessionaires, tenants/ vendors, or the public.
- m) Concessionaire shall not have amplified music or sound at the Premises and shall operate at noise levels that do not disturb Park patrons, residents of neighboring buildings, or other Park tenants, permittees, or occupants. .
- n) Concessionaire shall, if directed by the Trust, move or temporarily close for special events, emergencies, or any other unanticipated eventualities and to accommodate construction activity by the Trust, its contractors, and permittees. Should such closure be necessary, the Trust shall provide an proportional abatement of the Fee due for such period.

- o) Unless specifically directed to the contrary by the Trust, Concessionaire shall identify its location as being within Hudson River Park in all literature, brochures, handouts, advertising, and dissemination of information of any kind respecting its operations permitted hereunder. Such identification should read “Hudson River Park’s Pier 84.”

**3) Security:**

- a) Concessionaire shall secure the Premises and keep and maintain same in a safe and secure condition, including but not limited to utilizing reasonable and prudent security measures and equipment. Concessionaire shall keep all signs, structures and equipment free of graffiti. Concessionaire shall secure its personal property at the Premises at all times, including overnight. The Trust assumes no liability for any theft or damage of Concessionaire’s personal property.
- b) Concessionaire acknowledges that the Trust employs New York City Park Enforcement Patrol (“PEP”) officers to maintain public safety and security and enforce regulations, rules and law at the Premises and the Park, and agrees that it shall at all times abide by the directives of PEP officers acting in their official capacity (or officers, employees or agents of such successor security entity designated by the Trust) and, to the best of its ability, cause Concessionaire’s customers, employees, vendors, contractors and invitees to obey such directives. Concessionaire agrees that the Trust’s employment of PEP (or successor entity) officers does not relieve, reduce or substitute for its own obligation to provide security services related to its operation.

**4) Compliance:**

- a) Concessionaire, shall, at its sole cost and expense, comply with, or cause compliance with, all applicable laws, rules (including Park Rules), regulations, ordinances, codes and orders of all Federal, State, City and local governmental authorities, agencies, departments or bureaus having jurisdiction over the Concessionaire, the Pier 84 Mobile Food Cart Concession, and the Premises. Concessionaire shall give the Trust prompt written notice of any lack of compliance of which it is aware or has received notice. Concessionaire shall pay all costs, expenses, fines, penalties and damages that may be imposed upon the Trust by reason of or arising out of the Concessionaire’s failure to fully and promptly comply with the provisions of this Section 4.
- b) Concessionaire shall obtain all permits and/or licenses required for the lawful operation of the Pier 84 Mobile Food Cart Concession and the Premises prior to the commencement of operations. The Trust does not grant authority for any operation or use that may require any governmental or private permit or approval by the granting of the Concession Agreement.
- c) Concessionaire shall maintain the Premises in compliance with all applicable Federal, State, and local laws, ordinances, codes, rules and regulations affecting the use of the Premises. Concessionaire shall not conduct or allow any use or activity on the Premises inconsistent with law, and shall not conduct or allow any use or activity on the Premises

that may require a permit or other approval by a government agency without having lawfully obtained such permit or approval.

- d) Concessionaire shall comply with all City, State and Federal laws relating to access for people with disabilities.
- e) Concessionaire shall comply with all Hudson River Park rules and regulations as may be modified or amended from time to time. Concessionaire shall take all steps necessary to apprise all customers, including commercial operators, of the Hudson River Park rules and regulations. As of the date hereof, the Hudson River Park rules and regulations are accessible at:  
[https://www.hudsonriverpark.org/assets/content/general/Hudson\\_River\\_Park\\_Rules\\_Official-2013.pdf](https://www.hudsonriverpark.org/assets/content/general/Hudson_River_Park_Rules_Official-2013.pdf)
- f) Concessionaire shall cooperate fully 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 RFP proposal, concession, contract, permit, lease or license that is the subject of the investigation, audit or inquiry.
- g) Concessionaire shall comply with Sections 24-201 *et seq.* of the Administrative Code of the City of New York (the "Noise Control Code"). Concessionaire shall not permit or cause to be permitted, operated, conducted, constructed or manufactured on or near the Premises devices or activities that would cause a violation of the Noise Control Code. Concessionaire is expressly forbidden to use public address systems or other mechanical or hand operated voice or power operated megaphones in solicitation of business or for entertainment purposes in the vicinity of the Premises.
- h) Concessionaire shall pay all taxes applicable to the operation of the Pier 84 Mobile Food Cart Concession.
- i) If Concessionaire fails to comply with the requirement of this Section 4, the Trust may, upon seven (7) business days prior written notice to Concessionaire (provided that no notice shall be required in the event of an emergency), and without regard to any grace or cure period contained elsewhere in the Concession Agreement, take all remedial action deemed necessary to correct such condition, and Concessionaire shall reimburse the Trust for the actual cost thereof within thirty (30) days after written demand therefor. Notwithstanding anything herein to the contrary, the Trust shall have no obligation or responsibility to undertake any cure for, or on behalf of, the Concessionaire.

## **5) Advertising and Signage:**

- a) Concessionaire shall identify its location as being within "Hudson River Park" or at "Hudson River Park's Pier 84" in all literature, brochures, handouts, advertising and dissemination of information of any kind respecting its facility and programming

permitted hereunder unless otherwise authorized by the Trust.

- 6) The Trust shall provide Concessionaire with the standard Trust signage template for Concessionaire to produce Pier 84 Mobile Food Cart Concession related signage, i.e., hours of operation, rules and regulations, fees, etc.

7) **Utilities:**

An electric power connection shall be available from the interior space of the Pier 84 Park building for the operation of a removable refrigerator/freezer and other appliances of Concessionaire as approved by the Trust that may be located in the Western Area, or, with the approval of the Trust, the interior of the building. Concessionaire shall pay an additional monthly fee to the Trust for electricity based on the Trust's reasonable estimation of electrical consumption by such rated appliances.

8) **Operations & Maintenance:**

- a) Concessionaire shall keep the Premises and the adjacent pier area clean during the operating season pursuant to a regular cleaning schedule during the operating season and in accordance with all Trust rules and operating standards. Concessionaire shall submit a copy of the cleaning schedule to the Trust for its approval. Refuse may not be left anywhere in the Premises or the Park, including in other Park garbage disposal areas. All graffiti on the Premises must be removed within 24 hours of discovery. Concessionaire shall install additional trash receptacles at Concessionaire's expense if the existing trash receptacles are inadequate as determined by the Trust.
- b) Concessionaire shall maintain and clean all Mobile Food Carts on a regular basis. The Trust reserves the right to require replacement of Mobile Food Carts that are in poor condition at the Concessionaire's sole cost and expense.
- c) Concessionaire shall place mats or other protective surfaces under each cooking location and under each Mobile Food Cart to protect paved surfaces from staining.
- d) Concessionaire shall comply with all City, State and Federal regulations regarding recycling and shall be responsible for removing and disposing of recyclable products. Concessionaire is responsible for the proper removal of waste products that require special handling or disposal.
- e) Concessionaire must make arrangements with a private carting company to remove all refuse for off-site disposal on a daily basis. Concessionaire shall utilize wheeled hoppers approved by the Trust to transport trash from the Premises to the trash room and from the trash room to the Pier 84 service road for pick-up. Concessionaire, as required under New York City law, must also have its private carter provide recycling services.
- f) Toxic cleaning agents are prohibited from use at the Premises. Concessionaire shall not use or store any cleaning agents or other toxic materials at the Premises. Concessionaire

shall use “green” products to maintain the Pier 84 Outdoor Food Concession. Additionally, all cleaning agents that might adversely affect the building or pier finishes are prohibited, including the cleaning of fixtures and equipment located in and around the Premises. Concessionaire must ensure that the cleaning of equipment and fixtures does not result in the leakage of any type of fluid, including waste water, into/onto the ground or the Hudson River.

- g) Concessionaire shall keep the Premises free of infestation by rodents, insects and other vermin and shall undertake periodic extermination and checks for infestation. Use of pesticides must be consistent with Integrated Pest Management practices of the Trust. The Trust requires prior notice of spraying or application of pesticides. Application of pesticides must be performed by a properly certified applicator and must comport with all state and local requirements.
- h) Concessionaire is prohibited from undertaking any structural changes or improvements to the Premises.
- i) At the end of the Term or earlier termination of the Concession Agreement, Concessionaire shall return the Premises to the Trust in a condition as good as or better than its condition at the commencement of the Term.

**9) Special Events:**

- a) At the sole discretion of the Trust, the Trust may issue permits for special events on Pier 84, including events that may result in the temporary closing of the Pier 84 Mobile Food Cart Concession to the general public. Should such closure be necessary, the Trust shall provide a proportional abatement of the Fee due for such period. This amount will be calculated in advance at the sole discretion of the Trust. The Trust will notify Concessionaire, in writing, ten (10) days in advance of any such special event and provide reasonable cooperation to Concessionaire to minimize the effect of any closing on customers of the Pier 84 Mobile Food Cart Concession. The Trust shall not be liable to Concessionaire or any permittee or subpermittee for damages or losses caused by special events permits issued by the Trust.
- b) Concessionaire may not book any special event on the Premises without the prior written permission from the Trust. Any such event booked by Concessionaire shall require a separate authorization from the Trust and completion of a Special Event Permit Application.

**10) Vehicle Access for Pier 84:**

There are no provisions for parking or vehicular services in the Park for Concessionaire, its vendors, or customers. Deliveries to the Premises and across the Park shall be by hand-truck. Neither Concessionaire’s delivery nor trash removal vehicles are permitted to drive on Pier 84 or across the Park without the prior written approval of the Trust.



**11) Trust Access /Inspections:**

- a) Concessionaire shall permit access, inspection and examination of the Premises by the Trust's agents, employees, consultants and representatives during reasonable business hours and upon reasonable notice. Such right of access, inspection or examination shall include, but is not limited to, determining whether Concessionaire is complying with the terms of the Concession Agreement and whether the Premises are in good repair and maintenance, structurally sound, and that there are no hazardous, unsanitary, or defective conditions present; and to conduct tests, procedures, investigations and inspections in connection with developing plans for construction or improvements in, on, around or near the Premises. Such access shall be undertaken and coordinated with Concessionaire so as not to interfere with Concessionaire's operations to the extent practicable in the Trust's reasonable determination.
- b) The Trust may issue a notice of deficiencies observed during its inspections that Concessionaire must remedy within the time frame set forth in such notice. If the Concessionaire fails to promptly remedy the deficiencies, the Trust may, in its sole discretion, undertake the deficiency work. Concessionaire shall promptly pay for such costs incurred by the Trust. The Trust may also elect to terminate the Concession Agreement for Concessionaire's failure to correct such deficiencies upon fifteen (15) days written notice to Concessionaire, provided that Concessionaire has been afforded the opportunity to cure such default within such period.

**12) Term and Cancellation:**

- a) The term and rights granted hereunder are for a period of three and a half (3 ½ ) months (the "Term") and shall expire no later than September 30, 2018, unless extended with approval by the Trust by month to October 31, 2018. Upon expiration or earlier termination of the Concession Agreement, Concessionaire shall immediately cease all use of the Premises. For the avoidance of doubt, the Concession Agreement shall not automatically become a month-to-month or continuing agreement if not renewed by the parties in writing.
- b) The Trust may cancel the Concession Agreement for cause upon fifteen (15) days written notice to Concessionaire, provided that Concessionaire has been afforded the opportunity to cure such default within such period, except that the Trust may cancel the Concession Agreement upon seven (7) Business days written notice should Concessionaire fail to:
  - i) make any payment to the Trust as set forth herein;
  - ii) maintain in full force and effect any insurance required hereunder;
  - iii) operate the Pier 84 Mobile Food Cart Concession continuously during the Term for any reason other than (a) meteorological precipitation, (b) storm or wind events which make continuous operation unsafe in the reasonable judgment of the Concessionaire, (c) a casualty which makes the Pier 84 Mobile Food Cart Concession unsafe for use, or (d) the actions of the Trust to close the Park or Pier 84; or
  - iv) comply in with any of the terms and conditions of this Concession Agreement.

- c) Upon earlier termination of the Concession Agreement, all rights of Concessionaire hereunder shall be terminated and the Trust may retain all monies, if any, paid by Concessionaire to the Trust, whether as an advance Fee, security or otherwise, but such monies shall be credited by the Trust against any Fee due at the time of such termination or, at the Trust's option, against any damages payable by Concessionaire with the balance, if any, returned to Concessionaire.
- d) If any action is instituted or other proceeding is taken to enforce any term, covenant, or condition contained in the Concession Agreement or to recover use and control of the Premises by reason of the occurrence of cancellation of the Concession Agreement, Concessionaire agrees to pay to the Trust its reasonable attorneys' fees, costs, and expenses in connection therewith provided the Trust is successful.
- e) Each right of the Trust provided for in the Concession Agreement shall be cumulative and shall be in addition to every other right provided for in the Concession Agreement or now or hereafter existing at law or in equity. The exercise or beginning of the exercise by the Trust of any one or more of such rights shall not preclude the exercise by the Trust of any other rights provided for in the Concession Agreement or now or hereafter existing.
- f) Concessionaire acknowledges that the Concession Agreement is not a lease, and therefore a landlord-tenant relationship is not hereby created; and further, that since the Concession Agreement is not a lease, Section 5-321 of the General Obligations Law will not apply to the extent permitted by law. No ownership, leasehold or other property interest shall vest in Concessionaire by virtue of the Concession Agreement.

**13) Fee:**

- a) Concessionaire shall pay a fixed monthly fee (the "Fees") to the Trust in accordance with the following schedule:

June 2018	\$ XXXXXXXX
July 2018	\$ XXXXXXXX
August 2018	\$ XXXXXXXX
September 2018	\$ XXXXXXXX
October 2018 [option]	\$ XXXXXXXX

- b) Fees are due monthly in advance on the first day of each month. Except as provided for herein, the monthly fee shall be payable in full regardless of whether Concessionaire operates during one day of the month, or for every day of the month. There shall be no apportionment for partial months except for the first

calendar month of this Concession Agreement or as a result of repair or capital project work undertaken by Trust which limits Concessionaire's access to the Premises or as otherwise provided for herein.

- c) Any payment by Concessionaire or acceptance by Trust of a lesser amount than that due from Concessionaire to Trust shall be treated as a payment on account. The acceptance by Trust of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full shall be given no effect, and Trust may accept such check without prejudice to any other rights or remedies which Trust may have against Concessionaire. No receipt of money by Trust from Concessionaire after termination of this Concession Agreement or after the service of any notice or after the commencement of any suit, or after final judgment for possession of the Premises, will reinstate, continue, or extend, the Term or affect any such notice, demand or suit.
  
- d) Late charges shall be assessed on any payment that is overdue for more than five (5) days. In the event that payment of the monthly fee or percentage fee or any other charges shall become overdue for five (5) days following the date on which such fees are due and payable as provided in this Concession Agreement, a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to the Trust as liquidated damages for the administrative cost and expenses incurred by the Trust by reason of Concessionaire's failure to make prompt payment, and said late charges shall be payable by Concessionaire without notice or demand. If such late fee(s) and all arrearages (including prior 2% charges) are not paid in full by the fifteenth (15th) day of the month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly fee installment. Failure to abide by the terms of this late charges section shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this Concession Agreement and shall be a material default hereunder. No failure by the Trust to bill Concessionaire for late charges shall constitute a waiver by the Trust of such late charges or of its right to enforce the provisions of this Section 12. If any state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Section is enacted, the rate of interest set forth in this section shall not exceed the maximum rate permitted under such law or regulation.
  
- e) Payment of all amounts due under this Concession Agreement must be by wire, check, bank cashier's check, or money order, payable to and mailed or delivered to:
  - Hudson River Park Trust
  - Pier 40, Second Floor.
  - 353 West Street.
  - New York, NY 10014

Attn: Finance Department

**14) Security Deposit:**

- a) The security deposit will be retained by the Trust as security to ensure faithful performance of the Concession Agreement and compliance with all terms of the Concession Agreement by Concessionaire. Concessionaire's failure to comply with the terms of the Concession Agreement shall permit the Trust to retain all or any part of the security deposit to satisfy such default and any expenses arising therefrom. If Concessionaire complies with the terms of the Concession Agreement, the security deposit shall be returned to Concessionaire at the expiration or sooner termination of this Concession Agreement within thirty (30) days and without interest.
- b) Upon execution of this Concession Agreement, Concessionaire shall provide the Trust with a security deposit in the amount of \$ XXXXX.

**15) Insurance:**

- a) Prior to, or simultaneously with execution of the Concession Agreement, the Concessionaire shall provide the Trust with Certificates of Insurance naming the Additional Insureds set forth below and otherwise evidencing compliance with, and, if requested by the Trust, copies of the underlying insurance policies evidencing all coverage requirements contained in this Section 14. Such certificates and policies shall be in form and substance acceptable to the Trust. Acceptance and/or approval by the Trust do not, and shall not, be construed to relieve Concessionaire of any obligations, responsibilities or liabilities under this Section 14.
- b) All commercial liability insurance required by this Section 14 shall include the following as **“Additional Insured”**: Hudson River Park Trust, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the New York State Department of Environmental Conservation, the City of New York, and the New York City Department of Parks and Recreation. Additionally, the Hudson River Park Trust shall be named a Certificate Holder on the Concessionaire's insurance policies; the Trust offices are located at Pier 40 - 353 West Street, Suite 201, New York, NY 10014 - Attn: Insurance Coordinator. Additional Insured endorsement shall be on form CG 20 10 11 85 or its equivalent, or may be obtained through a combination of CG 20 10 07 01 and CG 20 37 07 01. Additional Insured coverage must apply to direct and vicarious liability to both on-going and completed operations.
- c) Concessionaire shall be solely responsible for the payment of all deductibles and self-insured retentions to which such policies are subject. The Trust must approve deductibles and self-insured retentions. Such approval shall not be unreasonably withheld.

- d) Concessionaire shall require that any subcontractors or sub-subcontractors hired to work on the Premises carry insurance with the same limits and provisions provided herein unless approved by the Trust on a case-by-case basis.
- e) Each insurance carrier must be rated at least “A-” Class “VII” in the most recently published A.M. Best’s Insurance Report. If, during the term of the policy, a carrier’s rating falls below “A-” Class “VII”, the insurance policy must be replaced no later than the renewal date of the policy with an insurer acceptable to the Trust and rated at least “A-” Class “VII” in the most recently published Best’s Insurance Report.
- f) Concessionaire shall cause all insurance to be in full force and effect as of the Commencement Date of the Concession Agreement and to remain in full force and effect throughout the Term of the Concession Agreement and as further required by this Section 14. Concessionaire shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Coverage shall:
  - 1) Be primary and non-contributing to any insurance or self-insurance maintained by the Trust.
  - 2) Be obtained at the sole cost and expense of Concessionaire or its respective subcontractor, and shall be maintained with insurance carriers licensed to do business in New York State and acceptable to the Trust.
  - 3) Provide written notice to the Trust, at least thirty (30) days prior to the termination, cancellation or non-renewal or material alteration of such policies; notice shall be sent, via USPS certified mail, to:

Hudson River Park Trust  
Attn: Insurance Coordinator  
353 West Street  
Pier 40, Second Floor  
New York, NY 10014
  - 4) Be solely responsible for the payment of their respective deductibles and self-insured retentions to which such policies are subject. General liability and umbrella/excess policies shall contain no deductibles in excess of Ten Thousand Dollars (\$10,000) per claim unless otherwise approved by the Trust;
  - 5) Be provided by Concessionaire’s subcontractors with the same limits and provisions as provided herein; with limits not less than those described, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies); and

- 6) Under no circumstances shall any policies exclude coverage for any Public Open Space or any portions of the premises used or for Public Access and Public Benefit Uses.
- g) Upon the renewal date of any insurance policies, Concessionaire shall supply the Trust with updated replacement proofs of coverage on Certificates of Insurance and any amendatory endorsements.
- h) Concessionaire, throughout the Term of the Concession Agreement, or as otherwise required by this Section 14, shall obtain and maintain in full force and effect, the following insurance with limits not less than those described below and as required by the terms of this Section 14, or as required by law, whichever is greater (limits may be provided through a combination of endorsements, primary and umbrella/excess policies):
- (1) **Commercial General Liability** insurance with a limit of not less than **Two Million Dollars (\$2,000,000)** per occurrence. Such liability shall be written on the CG 00 01 12 07, must include a broad form comprehensive general liability endorsement, or substitute form providing equivalent coverage and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal and advertising injury, cross liability coverage, blanket contractual liability (including tort liability of another assumed in a contract), pollution liability (including broad form bodily injury and property damage, under Coverage A and B exclusions), and extended bodily injury coverage, fire legal liability (property), and explosion, collapse & underground coverage; If such insurance is on an aggregate limit, it shall apply separately on a per job, per location basis.
  - (2) As applicable, **Comprehensive Business Automobile Liability** insurance with a limit of not less than **One Million Dollars (\$1,000,000)** per each accident. Such insurance shall cover liability arising out of any Automobile, Specialty Use vehicle or Mobile Equipment; including owned, leased, hired and non-owned automobiles; shall cover bodily injury, property damage, medical payments and uninsured motorists or operators.
  - (3) **Workers Compensation, Employers Liability and Disability Benefits insurance**, as required by New York State. Proof of Workers Compensation coverage must be presented on the NYS WCB C-105.2 or equivalent form, proof of Disability Benefits coverage must be provided on a DB-120.1 form.
    - a. The NY State Workers Compensation Board guideline regarding these requirements is available at:  
<http://www.wcb.ny.gov/content/main/forms/AllForms.jsp>

- b. If Exempt from Worker Compensation please refer to the following link and provide proof on the CE200 form issued by the NY State Workers Compensation Board:  
<http://www.wcb.ny.gov/content/ebiz/wcdbexemptions/requestExemptionOverview.jsp>
  - c. Proof of Employer Liability insurance is required with a limit of not less than \$1,000,000.
- i) **Waiver of Subrogation.** Concessionaire shall cause to be included in each of its policies insuring against loss, damage, or destruction by fire or other insured casualty a waiver of the insurer's right of subrogation against the Trust or any of the other additional insured identified above, or if such waiver is unobtainable (i) an express agreement that such policy shall not be invalidated if Concessionaire waives or has waived before the casualty, the right of recovery against the Trust or other such additional insured identified above or (ii) any other form of permissions for the release of the Trust or other such additional insured identified above.

The Trust and Concessionaire shall cooperate in connection with the collection of any insurance proceeds that may be due in the event of loss and each party shall execute and deliver such proofs of loss and other instruments which may be required for the purpose of obtaining the recovery of any such insurance proceeds.

Concessionaire's obligations as set forth in this Section 14 shall survive the expiration or earlier termination of the Concession Agreement.

#### **16) Indemnification:**

- a) Concessionaire shall defend, indemnify and save harmless the Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, the City of New York Department of Parks and Recreation, each of their respective commissioners, officers, agents, employees, successors and assigns ("Indemnitees") from and against any and all liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments which:
  - i. Arise from injury to any person or persons including death, or any damage to property of any nature, occasioned wholly or in part by any act(s) or omission(s) of Concessionaire or of the directors, officers, employees, guests, contractors, subcontractors, representatives or agents of Concessionaire, that occurs on or in proximity to the Premises, including but not limited to the lands underwater or dock or water areas adjacent to the Premises, or arise out of or as a result of this Concession Agreement, or

- ii. Relate to or arise from any and all liens and encumbrances which may be filed or recorded against the Premises or any public improvement lien filed against any funds of the Trust, the State or the City of New York, as a result of actions taken by Concessionaire, its directors, officers, contractors, subcontractors, agents, representatives, employees, guest or invitees.
- b) Further, Concessionaire agrees to defend, indemnify and hold harmless the Trust, the People of the State of New York, the New York State Executive Department, the New York State Office of Parks, Recreation and Historic Preservation, the New York City Region of State Parks, Recreation and Historic Preservation Commission, the Department of Environmental Conservation, the City of New York, the City of New York Department of Parks and Recreation, each of their respective commissioners, officers, agents, employees, successors and assigns from and against any and all loss, liabilities, claims, demands, penalties, fines, settlements, damages, costs, expenses and judgments of whatever kind or nature, arising out of, or in any way related to the presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials (as hereinafter defined) over, under, in, on or from the Premises caused wholly or in part by Concessionaire's acts or omissions, during its occupancy of the Premises but excluding those environmental conditions which are conclusively demonstrated to be "pre-existing." For purposes of this paragraph "Hazardous Materials" means:
  - i. Any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601 et seq. or
  - ii. "hazardous substance" as defined under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. or
  - iii. "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or
  - iv. "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 et seq. or
  - v. "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. 1321 et seq.
- c) Anything in this Section to the contrary notwithstanding, nothing in the Concession Agreement shall be construed to relieve the Trust from responsibility to Concessionaire for any loss or damage caused to Concessionaire wholly or in part by the negligent acts or omissions of the Trust; except, however, that the Trust shall not be responsible for such portion of such loss or damage which is recovered or recoverable by Concessionaire from any insurance covering such loss or damage or for such loss or damage against which Concessionaire is indemnified or insured.
- d) The provision of this Section shall survive the termination or non-renewal of the



Concession Agreement.

**16) Confidentiality:**

Subject to Freedom of Information Law requirements, at all times during the term of the Concession Agreement, and for three years thereafter, the parties shall hold in strictest confidence, and will not use or disclose to any third party, any confidential information of the other party unless required by law. The term “confidential information” means all non-public information to which one party has been or will be exposed in anticipation of or as a result of being engaged by the other and that such party designates as being confidential, or which under the circumstances of disclosure, the receiving party should reasonably understand should be treated as confidential.

**17) Premises Accepted As-is:**

- a) Concessionaire has inspected the condition of the Premises and accepts the Premises “as is” and shall not at any time make any claim that the Premises or structures thereon are not in suitable repair or condition for the uses and purposes of the Concession Agreement, nor will Concessionaire at any time make any claim for or by way of reduction of charge, or otherwise, for damage arising from or consequent upon any repairs that the Trust or Concessionaire may do or cause to be done or in consequence of the occupation of the Premises by Concessionaire, its agents or contractors.
- b) The Trust has not made nor does it make any representation or warranty as to the condition of the Premises or its suitability for any particular use or as to any other matter affecting the Concession Agreement.
- c) The provision contained in this Section 17 that Concessionaire accepts the Premises “as-is” relates to the condition of the Premises as they were when Concessionaire first entered into possession thereof, or on the Commencement Date, whichever is earlier.
- d) In the event anything in or around the Premises is damaged by Concessionaire during or in connection with Concessionaire’s use and occupancy, Concessionaire shall be liable and shall pay the Trust for the reasonable cost of repairs necessary to restore the Premises to the condition immediately prior to such damage.

**18) No Assignment:**

- a) Concessionaire shall not assign, grant use of, permit or license the whole or any part of the Concession Agreement, nor allow the same to be occupied by any person or entity other than Concessionaire, whether by merger, consolidation, purchase of assets, transfer of stock in Concessionaire, transfer of joint venture or partnership interests in Concessionaire, operation of law, or otherwise without the prior written consent of the Trust in each instance license.
- b) Concessionaire shall not mortgage or pledge the Concession Agreement or any part

thereof, or in any way charge or encumber the rights granted herein, or any part thereof, or issue or grant any permit or license to use the Pier 84 Mobile Food Cart Concession or any part thereof.

**19) Conflict of Interest:**

Concessionaire warrants and represents that no officer, agent, employee or representative of the Trust, has received any payment or other consideration for the granting of the Concession Agreement and that no officer, agent, employee or representative of the Trust has any interest, directly or indirectly in Concessionaire, the Concession Agreement, or the proceeds thereof. Concessionaire acknowledges that the Trust is relying on the warranty and representation contained in this article and that the Trust would not enter into this the Concession Agreement absent the same. It is specifically agreed that, in the event the facts hereby warranted and represented prove, in the opinion of the Trust, to be incorrect, the Trust shall have the right to terminate the Concession Agreement upon twenty-four (24) hours' notice to Concessionaire and to rescind this transaction in all respects.

**20) No Waiver of Concession Agreement Terms:**

In the event Concessionaire fails to pay the Trust the charged fee or any other applicable fees, then any subsequent payments shall first be applied for unpaid charged fees due. Notwithstanding the foregoing, the Trust's acceptance of partial payment of any charged fee or failure to enforce any provision of the Concession Agreement shall not be considered a waiver of any of the Trust's rights under the Concession Agreement or at law. The Concession Agreement states the entire agreement between the Trust and the Concessionaire and supersedes all prior negotiations, representations and agreements, whether written or oral. The Concession Agreement may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the Trust and Concessionaire.

**21) No Flammable Materials:**

Concessionaire shall not place or store, or allow others to place or store, any flammable explosive, hazardous, toxic or corrosive materials, debris of any description, garbage or any materials commonly referred to as "junk" within the Premises. Any use of fuel at the Premises must be accordance with applicable regulations of the New York City Fire Department.

**22) Executory Clause:**

In accordance with Section 41 of the State Finance Law, the Trust shall have no liability under the Concession Agreement to Concessionaire or to anyone else beyond funds appropriated and available for the Concession Agreement.

**23) Discrimination:**

In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions,

Concessionaire shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Neither shall Concessionaire discriminate in the use of these Premises or any access to these Premises if such Premises are used as a public accommodation or in connection with a public service.

**24) Liens Against Premises:**

Concessionaire shall not create, cause to be created or allow any lien, encumbrance or charge upon the Premises or any part thereof. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Premises or any part thereof, then Concessionaire shall within thirty (30) days after receipt of notice of the filing of such lien, cause such lien to be vacated or discharged of record by payment, deposit, bond, order of court of competent jurisdiction or otherwise.

**25) No Oral Modification:**

The Concession Agreement may not be altered, modified or amended in any manner whatsoever except by a written instrument signed by the Trust and Concessionaire.

**26) Severability:**

If any of the provisions of the Concession Agreement are held invalid, such invalidity shall not affect or impair other provisions of the Concession Agreement which can remain in effect without the invalid provisions, and therefore, the provisions of the Concession Agreement are severable.

**27) Notices:**

Any notice, approval, consent, acceptance, request, bill, demand or statement required or permitted to be given hereunder (a "Notice") from either party to the other shall be in writing and shall be deemed given when received by hand delivery, overnight mail or when deposited with the United States Postal Service in a postage prepaid envelope, certified or registered mail, addressed to the other party at the address set forth herein.

If to the Trust:

Hudson River Park Trust  
Pier 40, 2<sup>nd</sup> Floor  
353 West Street  
New York, New York 10014  
Attn.: Property Manager

With a copy to:  
General Counsel

If to Concessionaire:

XXXXXX

Address: XXXXX

New York, New York XXXXX

Attn.:

With a copy to:

XXXXXX LAW FIRM, PLLC

Address: XXXXX

New York, New York XXXXXXXX

Either party may at any time change such address or add additional parties to receive a Notice by mailing, as aforesaid, to the other party a Notice thereof.

**28) No Arbitration:**

Disputes involving the Concession Agreement, including the breach or alleged breach thereof, may not be submitted to binding arbitration but must, instead, be heard in a court of competent jurisdiction of the State of New York.

**29) Service of Process:**

In addition to the methods of service allowed by the State Civil Practice Law & Rules (“CPLR”), Concessionaire hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Concessionaire’s actual receipt of process or upon the Trust’s receipt of the return thereof by the United States Postal Service as refused or undeliverable. Concessionaire must promptly notify the Trust, in writing, of each and every change of address to which service of process can be made. Service by the Trust to the last known address of Concessionaire shall be sufficient.

**30) Reimbursement of Legal Fees:**

In the event that Concessionaire and the Trust are involved in a legal proceeding relating to any part of the Concession Agreement, Concessionaire shall reimburse the Trust for all costs associated with said legal proceeding, including, but not limited to, court costs and reasonable attorneys’ fees incurred by the Trust where: (1) during said legal proceeding, a final determination by a neutral party finds Concessionaire to have materially breached the terms of the Concession Agreement; or (2) Concessionaire initiates said legal proceeding against the Trust and/or its directors, officers, or employees and Concessionaire does not prevail in such action.

**31) Interest of Others:**

Nothing in the Concession Agreement shall be construed to give any person other than the Trust and Concessionaire any legal equitable right, remedy or claim. The Concession Agreement shall

be held to be for the sole and exclusive benefit of the Trust and Concessionaire.

**32) Governing Law:**

The Concession Agreement shall be construed under, and be governed by, the laws of the State of New York, excluding conflict of law principles. No legal proceeding shall be commenced by Concessionaire against the Trust in any court other than a court of competent jurisdiction of the State of New York in the County of New York. Concessionaire agrees to waive all rights to a trial by jury in any legal proceeding to which Concessionaire and the Trust are parties.

**33) Management and Control.** Throughout the Term of the Concession Agreement, Concessionaire shall be controlled and managed by [XXXXXXXXXXXXX].

**34) Warranty of Authority:**

The undersigned signatory for Concessionaire by signing the Concession Agreement personally warrants that he or she has the power and authority to enter into the Concession Agreement on behalf of Concessionaire and to bind Concessionaire to the terms and conditions of the Concession Agreement.

**INTENTIONALLY LEFT BLANK**

**GRANTOR:**

**CONCESSIONAIRE:**

**HUDSON RIVER PARK TRUST**

**XXXXXXXXXXXXXXXXXX**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Madelyn Wills

Name:

Title: President

Title:

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that s/he is the \_\_\_\_\_ of \_\_\_\_\_, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed same in her/his official capacity and for the purpose mention therein.

\_\_\_\_\_  
Notary Public

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF \_\_\_\_\_)

On this \_\_\_\_ day of \_\_\_\_\_, 2018, before me personally came \_\_\_\_\_ to me known, who being duly sworn, did depose and say that s/he is the \_\_\_\_\_ of \_\_\_\_\_, and the said person described in and who executed the foregoing instrument, and s/he acknowledged that s/he executed same in her/his official capacity and for the purpose mention therein.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**PREMISES**

Exhibit A: Premises



2. Trash Room: Approx. 86 SF

3. Locations for four  
Mobile Food Carts

1. Western Outdoor Area



**EXHIBIT B**

**MENU & PRICE LIST**