

SOLICITATION # 2023-M5-PM-SB

REQUEST FOR PROPOSALS

FOR

THE OPERATION OF A CAFÉ IN PETER MINUIT PLAZA

AT

**THE BATTERY
MANHATTAN**



ISSUE DATE:

April 11, 2023

90 Broad Street, Suite #1503, New York, NY 10004

Request for Proposals (RFP)

The Battery Conservancy (TBC) and the New York City Department of Parks & Recreation (NYC Parks) are issuing a Request for Proposals (RFP) for the operation of a café located in the New Amsterdam Pavilion in Peter Minuit Plaza, the forecourt of Whitehall Terminal, where Staten Island ferry passengers embark and disembark.

This RFP is being issued pursuant to an underlying sole-source concession agreement (Agreement) between NYC Parks and TBC (see Exhibit B below). Any sublicense agreement awarded through this RFP is subject to and subordinate in all respects to the Agreement, which can be viewed here.

We seek talented and experienced food service professionals whose ideas, capabilities, and resources will make the café an attractive facility for both take-away and outdoor on-site food and beverage service, appealing to New York City commuters as well as tourists, and drawing new visitors to The Battery, the 25-acre public park at the southern tip of Manhattan.

TERM

TBC is seeking a sublicensee beginning as soon as possible in Spring 2023 and terminating on May 25, 2026, with three optional extensions of one year each, provided that NYC Parks extends or enters into a new underlying sole source agreement with TBC. No longer term will be considered. NYC Parks' current sole source concession agreement with TBC is anticipated to expire on February 25, 2025. Should NYC Parks enter into a successor agreement or extension with TBC, any sublicense agreement will be subject to its terms and conditions. The concession will be operated pursuant to a sublicense agreement with TBC and will also be subject to the requirements of TBC's underlying agreements with NYC Parks; no leasehold or other proprietary right is offered.

PROJECT MANAGER

The TBC Project Manager for this concession is Hope Cohen, TBC's Chief Operating Officer. All RFP questions and/or inquiries should be directed to her. She may be reached at:

Phone: 917.409.3710

Email: hope.cohen@thebattery.org



If you have a hearing impairment, please call the following toll-free number and leave a message on the Telecommunication Device for the Deaf (TDD). The TDD number is (212) 504-4115.

RFP TIMETABLE

RFP Release Date:	Tuesday, April 11, 2023
Proposer Meeting:	Tuesday, April 18, 2023 at 11am
Proposals Due:	Tuesday, May 2, 2023 at 3pm



If you have a physical disability and cannot deliver your proposal to the TBC office, please contact the Project Manager(s) at least 48 hours prior to the deadline to make alternative arrangements.

RECOMMENDED PROPOSER MEETING AND SITE TOUR

TBC and NYC Parks will hold a proposer meeting at the concession site, located at Peter Minuit Plaza at The Battery (“Licensed Premises”).

PROPOSER INTERVIEWS

The Selection Committee may decide to meet with certain proposers after May 4.

PROJECT BACKGROUND

The Battery Conservancy was established in 1994, in partnership with NYC Parks, to raise funds to design and implement The Battery Master Plan. Over the past two decades The Battery’s 25-acre park at the southern tip of Manhattan that overlooks New York Harbor has been rebuilt.

As the front lawn of Downtown and a hub of family activities, The Battery is the largest and most dynamic public open space in Lower Manhattan. Before COVID-19 over seven million people, including residents, office workers, school groups, and tourists from around the world, visited the park and its major landmark, Castle Clinton National Monument, every year. Visitorship declined significantly in 2020, but began building back in 2021. TBC anticipates the term of this sublicense to coincide with the period of Lower Manhattan’s economic and societal recovery from COVID-19—and reestablishing The Battery as a vibrant resource for outdoor life and physical and mental wellbeing.

To this end, The Battery Conservancy seeks qualified, creative food-service professionals who share its values of innovation and sustainability, and whose work features:

- seasonality and the use of regional organic ingredients
- ingredients sourced from local farms, suppliers, and purveyors
- nutritious, healthy choices
- menus with a range of prices
- demonstrable business experience, including food service in an outdoor setting

SUBSTANCE OF PROPOSAL (SEE BELOW FOR SUBMISSION REQUIREMENTS)

A. OPERATIONAL OVERVIEW

The New Amsterdam Pavilion and the Peter Minuit Plaza on which it sits are owned by the City of New York, administered by the New York City Department of Parks & Recreation (NYC Parks), and licensed to The Battery Conservancy (TBC).

The successful proposer will be awarded concession rights to provide food service at approximately 75% of the New Amsterdam Pavilion. (See Exhibit D for Pavilion floorplan, including contract boundaries.) All seating is open to the public, whether or not they purchase anything from the concession. If the operator serves alcoholic beverages, consumption of such beverages must be limited to a cordoned off portion of the Licensed Premises.

Please refer to Attachment C for a site plan delineating licensed premises of the New Amsterdam Plaza and Pavilion.

1. Operational Plan

Proposers should submit a detailed operational plan for the entire Licensed Premises. This plan should include, but not be limited to, hours of operation, services to be provided, any plans to install energy efficient appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices, staffing plans, safety and security plans, menu, merchandise to be sold, programming plans, mechanisms to measure customer satisfaction, a detailed list of all proposed fees and prices, and a maintenance plan including snow removal, rubbish removal, and cleaning schedules.

All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to the prior written approval of TBC and NYC Parks.

2. Hours of Operation

TBC encourages proposals to include breakfast, lunch, and evening food service every day, from the start date of this concession to its termination.

Proposers should submit their intended hours of operation, which will be subject to approval by TBC and NYC Parks. Any changes to operating hours/schedule must be approved by TBC and NYC Parks and do not relieve the concessionaire from any other obligations under the sublicense, including the payment of all fees.

3. The Café

The concessionaire will be required to operate and maintain the café at a high standard of quality while providing a convenient service to the public.

Proposers should submit a menu and price list that demonstrates quality and affordability. TBC understands that the location might most productively offer a limited menu and urges proposers to incorporate healthy food choices such as fresh fruit and yogurt as well as diversity of ethnic

origin, reflective of New York’s cultural multiplicity. All prices and menu items are subject to the prior written approval of TBC and NYC Parks.

Executive Order 54, signed by the Mayor on February 6, 2020, directs City agencies to end the unnecessary purchase of single-use plastic beverage bottles, defined as a drink, such as water, in a sealed rigid plastic bottle having a capacity of 21 fluid ounces or less, and to end their unnecessary sale on City owned or leased property. As such, NYC Parks is phasing out the sale of single use plastic bottles at NYC Parks concessions. Proposers should be aware that single-use plastic beverage bottles as defined herein will be prohibited for sale at this concession. Plastic bottle alternatives, such as aluminum or boxed beverages, are permitted.

As this concession will be a sublicense of the TBC license from NYC Parks, further sublicensing of food services by the concessionaire will not be permitted.

DEPARTMENT OF HEALTH AND MENTAL HYGIENE (DOHMH) INFORMATION

Any staff assigned by the concessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene (DOHMH) permits. **The concessionaire may only operate the food service kiosks if they have obtained the appropriate, valid permits and authorizations required by DOHMH.** At all times that the food service kiosks are operating, a staff person with a valid DOHMH food handler’s license must be present.

(To obtain a DOHMH license, contact the Citywide Licensing Center, 42 Broadway, 5th floor, Monday through Friday 9:00 am to 5:00 pm, or by phone at 311 or 212-New York. Note: Offices are closed during City/Public Holidays. Vendors should be aware that applying for a DOHMH license for the first time can take six weeks or more. Vendors operating without all necessary permits may be subject to fines and/or confiscation of merchandise and inventory.)

DOHMH Letter Grades for Food Facilities (snack bars, restaurants, etc.): Proposers should note that this food facility is subject to a Department of Health and Mental Hygiene letter grading program. The current program is codified in Health Code Article 81.51 and Chapter 23 of Title 24 of the Rules of the City of New York and is described at: <http://www1.nyc.gov/site/doh/business/food-operators/letter-grading-for-restaurants.page>

4. Alcoholic Beverages

Alcoholic beverages may be served to complement the food service, provided that the concessionaire obtains the appropriate license(s) from the State Liquor Authority (SLA). Alcoholic beverages may only be served in the immediate vicinity of the Licensed Premises and only within a designated, cordoned-off area. All efforts must be made to keep alcohol consumption discreet. The operator must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

5. Tables & Chairs

The concessionaire will be responsible for purchasing and maintaining all tables and chairs for public use in New Amsterdam Plaza. With the exception of a cordoned-off area for alcohol

consumption, the operator must ensure free and open public access to the seating areas. The concessionaire will also be responsible for stacking and securing tables and chairs at the close of business, in a manner developed with, and approved by, TBC. The design, color, placement, and number of all tables, chairs and equipment are subject to the prior written approval of TBC.

6. *Vehicle Access*

The concessionaire will be allowed one early morning delivery into the park. Additional deliveries must be unloaded outside the park and brought in by foot or handcart. There is no parking available at the Licensed Premises for facility staff and patrons.

7. *Staff*

The concessionaire will be required to have sufficient staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession. TBC and NYC Parks reserve the right to require that all staff wear uniforms that have been approved in writing by TBC and NYC Parks.

8. *Storage and Inventory*

The New Amsterdam Pavilion has very limited storage space. The concessionaire shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for the operation of the concession. The concessionaire must also develop a system for deliveries to ensure that adequate inventories of food and beverages are maintained at all times, particularly during peak service hours.

The concessionaire shall not store any equipment or supplies at the Licensed Premises without the prior written approval of TBC and NYC Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises, without the prior written approval of TBC and NYC Parks. The concessionaire will be required to securely store all outdoor equipment, tables and chairs on a nightly basis and whenever the concession is closed.

9. *Maintenance*

The concessionaire will be required, at its sole cost and expense (or through arrangements with third parties), to equip, operate, and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, interior flooring, cabinetry, storage and kitchen equipment, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, stone screenings, vaults, gutters, curbs and fixtures. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Licensed Premises shall be subject to the prior written approval of TBC and NYC Parks.

10. *Rubbish Removal & Recycling*

The concessionaire will be responsible, at its sole cost and expense, for clean-up and removal of all waste water, waste, garbage, refuse, rubbish and litter from the Licensed Premises and the area within fifty (50) feet of the Licensed Premises. The concessionaire will be required to provide adequate and easily accessible waste and recycling receptacles, approved by TBC and NYC

Parks, and have these receptacles emptied on a daily basis, or more frequently as needed. The location and placement of all waste and recycling receptacles is subject to the prior written approval of TBC and NYC Parks. The concessionaire will be required to comply with all City, State, and Federal regulations regarding recycling. In addition, the concessionaire will be required to demonstrate to the satisfaction of TBC and NYC Parks, through a detailed maintenance plan, that it will keep and maintain the site in excellent condition throughout the license term.

11. Signage and Advertising

The concessionaire is prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of TBC and NYC Parks. The display or placement of tobacco or electronic cigarette or non-tobacco smoking product advertising is prohibited. The display or placement of advertising of alcoholic beverages is prohibited, but Licensee may display signage approved by TBC and NYC Parks, setting forth its own offerings of alcoholic beverages. The following standards will apply to all allowed advertising: Any type of advertising that is false or misleading, that promotes unlawful or illegal goods, services or activities, or that is otherwise unlawful (including, but not limited to, advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11) is prohibited. Advertising of product brands is prohibited without the prior written approval of TBC and NYC Parks. Any and all signage is subject to the prior written approval of NYC Parks. The design and placement of all signage, including signage that includes the concessionaire's name, trade name(s) and/or logos, is subject to the prior written approval of TBC and NYC Parks. The concessionaire is prohibited from placing advertisements on the exterior of its licensed premises. Any prohibited material displayed or placed shall be immediately removed by the concessionaire upon notice from TBC or NYC Parks at the sole cost and expense of the concessionaire.

12. Internal Controls

Throughout the License term, the concessionaire will be required to use such accounting and internal control methods and procedures and keep such books and records as may be reasonably prescribed by the City of New York, NYC Parks, any other governmental authority and/or TBC from time to time. This internal control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. The concessionaire must also establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record. TBC shall have the right to provide full access to agents of the City, NYC Parks, any other governmental authority and/or TBC to examine the recordkeeping procedures of the concessionaire in order to assure that the concessionaire's means, methods and procedures are adequate to reveal the true, correct and entire business conducted by the concessionaire. In addition to and without limiting the foregoing, TBC shall have the right to provide, at the concessionaire's sole cost and expense and with the concessionaire's full cooperation and assistance, representatives (including, but not limited to, auditors) of the City, NYC Parks, any other governmental authority and/or TBC, full and free access, for inspection, examination, audit and/or other compliance purposes, to any of said materials during the term of the License Agreement and during such subsequent period.

13. Naming of the Concession

Proposers should be aware that NYC Parks may require that TBC and the City own the portion of any concession name that indicates NYC Parks property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with the property of NYC Parks. TBC and NYC Parks reserve the right to approve of any name selected by the concessionaire for the concession.

14. Utilities

TBC makes no representations regarding the adequacy of utilities in place at the Licensed Premises. The concessionaire is required to connect to any existing utility service and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage on the Licensed Premises and an account with Con Edison (or other relevant providers) as appropriate. The concessionaire must pay any and all utility costs associated with the operation of this concession during the term of the sublicense. These utility costs include, but are not limited to, paying all water and sewer charges that the New York City Department of Environmental Protection (DEP) assesses for water usage. Concessionaire is strictly prohibited from unauthorized use of utilities used, operated or owned by the City.

15. Drought & Water Conservation Issues

The concessionaire is required to adhere to all DEP directives and restrictions regarding drought and water conservation issues during the term of the sublicense. Proposals should include any plans to employ methods and equipment which will conserve water.

16. Music & Sound Levels

The concessionaire will be required to comply with all laws, rules and regulations of appropriate agencies, specifically the Department of Environmental Protection (DEP), regarding noise levels, and concessionaire shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music. The concessionaire may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Outdoor amplified sound will not be permitted past 10pm.

17. Environmental Considerations

As protectors and providers of green spaces, TBC and NYC Parks are deeply committed to respecting the environment. Therefore, all proposed operational plans should include identify environmentally friendly practices planned for the Licensed Premises.

Practices may include, but are not limited to, use of: Energy Star compliant appliances; energy efficient, non-polluting, low noise generators; water conservation measures; and environmentally friendly products, including LEDs. Any chemicals used should be of the lowest possible toxicity.

TBC views favorably the installation of Energy Star approved appliances and equipment such as commercial refrigerators at the Licensed Premises. Proposers should state whether they intend to

install products that have the Energy Star seal of approval. Energy Star products and environmentally friendly practices can be found at <https://www.energystar.gov>.

TBC also views favorably proposals that include plans to use “Green Seal” eco-friendly products such as soaps, cleaners, light bulbs, paper towels, toilet paper and paint. A list of “Green Seal” certified products can be found at <https://www.greenseal.org>.

TBC also encourages plans to reduce or eliminate the use of single-use plastics (e.g. plastic straws, utensils) in concession operations.

The use of chlorine free, biodegradable and/or compostable products such as paper towels, napkins, utensils and plates (if the proposer intends to utilize disposable products for food service at the Licensed Premises). As stated in the Project Background, TBC and NYC Parks seek a concessionaire that will offer sustainable, organic, and locally grown/produced foods. Proposers can consult the website of the Green Restaurant Association (GRA) to locate GRA-endorsed products (<http://www.dinegreen.com>). TBC and NYC Parks encourage the successful proposer to train staff on environmentally friendly food-service practices and to use TBC’s composting facility to dispose of food waste.

18. Special Events

TBC reserves the right to host a limited number of events, including benefits and other non-profit or public events, at the Licensed Premises. The dates of such events shall be mutually agreed upon by all parties and shall be reserved in writing not less than one month in advance. NYC Parks, acting on behalf of the City of New York, may also host/sponsor such events. The Licensed Premises shall not be closed to conduct private activities during public hours of use unless such activities are specifically approved or sponsored by TBC and NYC Parks and the closure has been announced to the public at least two weeks in advance of the date of the activity. Concessionaire must document each special event via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such special events must be reported to TBC and NYC Parks as Gross Receipts.

19. Security

Pursuant to a plan approved in writing by TBC and NYC Parks, the concessionaire, at its sole cost and expense, shall be responsible for all security at the Licensed Premises during its operating season. The concessionaire will be required to secure the Licensed Premises and any other equipment every evening. The concessionaire will be required to provide two (2) 24-hour contact numbers in the event of an emergency.

20. Safety

Proposers with prior experience in operating this type of facility or similar facilities should submit their personal and/or company safety record. Each proposal must include a detailed outline of maintenance schedules and safety precautions required for the operation of the Licensed Premises as well as any applicable staff qualifications and certifications. Proposers should also provide descriptions of the locations and types of facilities they have operated, including a list of references. The concessionaire will be required to comply with all national

safety guidelines and Federal, State and City laws, rules and regulations related to the development, operation and maintenance of the Licensed Premises. The concessionaire must also abide by all New York City and New York State guidelines for COVID19 safety.

21. Community Relations

TBC will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community, with plans to cooperate with and support park administrators, park users, other licensed concessionaires in the park, and the community.

TBC will view favorably proposals that demonstrate how the concessionaire will work with TBC and NYC Parks staff to address maintenance issues. The concessionaire should employ preventative maintenance techniques to discourage litter in the gardens. These techniques should be outlined in each proposal.

22. Customer Service

TBC and NYC Parks expect the concessionaire to create and maintain a high-quality amenity for the public. Proposals should include plans to implement customer service mechanisms that will enhance and maintain the satisfaction of patrons. These mechanisms should be outlined in each proposal.

23. Identification & Address

The successful proposer will be required to present picture identification (such as a driver's license or a passport) and proof of address (such as a utility bill) in order to execute the License Agreement. In addition, all proposers will be expected to provide to TBC and NYC Parks at least two (2) telephone numbers for contact purposes. The successful proposer shall notify the NYC Parks Revenue office and TBC immediately of any changes to the successful proposer's address or phone number.

24. Access to Licensed Premises

The concessionaire will be required to provide TBC, NYC Parks, the City and any other governmental authority with full and free access, at all times, to the Licensed Premises for any purpose.

25. No Exclusive Vending Rights

Proposers should note that the License Agreement will not grant the concessionaire exclusive rights to sell in The Battery. Moreover, TBC and NYC Parks may grant other permits to vendors to sell the same or similar items authorized under this License Agreement within The Battery. TBC and NYC Parks do not guarantee that illegal vendors or disabled veteran vendors will not compete with the successful proposer in operating near the Licensed Premises. TBC and NYC Parks encourage concessionaires to report illegal vending by calling 311.

B. OPERATIONAL ENFORCEMENT

Inspectors from NYC Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, NYC Parks may issue directives regarding deficiencies the concessionaire must rectify in a timely fashion. Violations of the terms of the sublicense may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the concessionaire's security deposit. If the concessionaire fails to provide the cleaning, maintenance, and operational services required by the sublicense, NYC Parks shall notify the concessionaire in writing, and

the concessionaire shall be required to correct such shortcomings within the timeframe set forth in such notice. If the concessionaire fails to cure the violation within the timeframe set in the notice, NYC Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the sublicense. NYC Parks may impose a \$250 administrative fee for reinstatement. Liquidated damages may be assessed in accordance with the following schedule:

Provision	Liquidated Damages per Occurrence
Unauthorized Menu Items or Merchandise	\$150
Missing or Unauthorized Price List	\$250
Overcharging	\$350
Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Unauthorized Advertising	\$350
Improper Storage	\$350
Graffiti or Dirty Facility and/or Equipment	\$350
Unauthorized Vehicular Activity	\$350
Operating Without Applicable DOHMH or Parks Permit(s) or License(s)	\$350
311 Sign Not Displayed	\$250
Damaged Equipment or Structure(s)	\$350

The concessionaire may appeal the imposition of such assessments according to the following procedure:

1. Filing an Appeal

If the concessionaire wishes to appeal the assessment, a notice of appeal must be delivered to NYC Parks within ten (10) days, along with a notarized statement of reasons that the concessionaire believes the assessment was erroneous. The concessionaire may include supporting evidence (e.g., photographs, documents, witness statements) with its appeal.

The appeal shall be sent to the Director of Operations Management & Planning, with offices at the Arsenal, 830 Fifth Avenue, New York, NY 10065.

If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to the concessionaire’s account.

2. Adjudication of Appeal

The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of NYC Parks.

The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to the concessionaire in person.

C. CAPITAL IMPROVEMENTS

TBC does not anticipate a need for capital investment by the concessionaire, other than for outfitting and/or upgrading the kitchen equipment in the kiosks. Should more extensive capital work be needed (“Supplemental Capital Work”), the concessionaire will be required to perform such work and its cost will be supplemental to the yearly operation fee (“Minimum Guaranteed License Fee”) and will not be deducted, reduced, or offset against such Minimum Guaranteed License Fee. The concessionaire must also retain a professional licensed engineer or registered architect approved by TBC and NYC Parks to oversee construction. This supervising architect or engineer will be required to ensure that all construction conforms to the plans approved by TBC and NYC Parks.

All capital improvements and fixed equipment become the property of NYC Parks upon installation. The concessionaire will be required to supply all additional equipment and materials necessary for the successful operation of the concession. TBC and NYC Parks concessionaires may request a sales tax waiver for all sales tax costs associated with the capital expenditures on a park concession.

All necessary permits and approvals for capital work and design must be obtained from the New York City Department of Buildings (DOB) including, but not limited to, Certificate of Occupancy, Public Assembly Permit or Letters of No Objection, as needed. Additionally, all designs and construction to be performed on the structure shall be prepared by licensed architects or engineers and will require prior written approval from TBC, NYC Parks, DOB, and/or any other agency having jurisdiction. The concessionaire will be required to provide TBC and NYC Parks with all plans and specifications upon completion of construction documents.

D. ADDITIONAL REQUIREMENTS DURING THE LICENSE TERM

1. The concessionaire will be required to develop, operate, and maintain the Licensed Premises as a concession for the use and enjoyment of the general public.
2. The concessionaire accepts the Licensed Premises in “as-is” condition.
3. The concessionaire will be required to submit a security deposit of \$10,000, which will be required for the duration of the term of the license. This security deposit is due upon signing of the sublicense agreement.
4. If any fees or other charges or sums payable by concessionaire to TBC shall be overdue and unpaid for at least thirty (30) days, a two percent (2%) late fee penalty shall be added for each 30-day period that the payment is overdue and unpaid.
5. The concessionaire will be required to carry Commercial General Liability insurance in at least two million dollars (\$2,000,000) per occurrence, two million dollars aggregate (\$2,000,000) and statutory limits of Worker’s Compensation, Employer’s Liability and Disability Benefits Insurance. The Commercial General Liability insurance will be required to name the City of New York, including its officials and employees, and TBC an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form GC 20 26, and the City and TBC’s limits will be no lower than concessionaire's.

If vehicles are to be used in connection with the concession, the concessionaire shall carry Commercial Automobile Liability insurance in the amount of \$1,000,000 for each accident combined single limit for liability arising out of ownership, maintenance or use of any owned, non-owned, or hired vehicles. The concessionaire shall maintain all-risk property insurance covering all buildings or structures on the property at a value determined by TBC and NYC Parks. In the event the concessionaire shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than two million dollars (\$2,000,000) per occurrence, and name TBC and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol by such person on the Licensed Premises. Proposers are on notice that the City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, the proposed concession warrants it.

6. The concessionaire will be required to submit monthly statements of gross receipts from all categories of income in a format approved by TBC and NYC Parks. Within sixty (60) days following the end of each operating year, the concessionaire will be required to submit a detailed income and expense statement for the past year's operation. Such statements shall include the salaries of all paid staff and all costs associated with the maintenance and repair of the Licensed Premises. The concessionaire may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts. The concessionaire is required to maintain an internal control system to ensure the accurate and complete recording of all revenues, as described under "Internal Controls" in Section A(12) above.
7. The concessionaire is required to pay all taxes applicable to the operation of the concession. Gross receipts shall exclude the amount of any federal, state, or city sales taxes that are paid by the concessionaire.
8. The concessionaire will be responsible for regular pest control inspections and extermination, as needed. To the extent that the concessionaire applies pesticides to any property owned or leased by the City, concessionaire or any subcontractor hired by concessionaire shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.
9. The concessionaire will be prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from TBC and NYC Parks. The concessionaire will report dead and diseased trees to TBC, which will in turn notify NYC Parks. It is prohibited to attach anything, including lights, to trees.
10. The concessionaire is required to cooperate with TBC and NYC Parks during special and other unanticipated events.
11. Smoking of any tobacco product or non-tobacco smoking product or electronic cigarette is strictly prohibited at the Licensed Premises. The concessionaire will be required to adhere to and enforce this policy.
12. Pursuant to NYC Parks' policy citywide, the concessionaire will be prohibited from serving any beverages in glass bottles. All beverages will be required to be in non-glass, shatter-proof containers. Also, the use of polystyrene packaging or food containers will be prohibited in the operation of the concession.

13. Selling and/or advertising cigarettes, electronic cigarettes, cigars, or any other tobacco products, or non-tobacco smoking products is strictly prohibited. The concessionaire is required to adhere to and enforce this policy.
14. The concessionaire will be required to indemnify TBC and the City for claims arising out of the concessionaire's operations under the sublicense Agreement, pursuant to a provision to be included in the sublicense Agreement.
15. The concessionaire must obtain written approval from TBC and NYC Parks before entering into any marketing or sponsorship agreement. In the event that the concessionaire breaches this provision, the concessionaire shall take any action that the TBC or City may deem necessary to protect TBC's and the City's interests.
16. The concessionaire is required to operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable law, including, if necessary, a Certificate of Occupancy. The concessionaire shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. The concessionaire is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.
17. The concessionaire will faithfully conform and cause its agents, employees, and invitees to conform to all laws, rules, regulations, and orders now prescribed or which may hereafter be prescribed by the Commissioner and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and/or the concessionaire's and DPR's use and occupation thereof. This includes, but is not limited to, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.
18. The concessionaire is responsible for obtaining all necessary permits, licenses and approvals from all City, State and Federal agencies having jurisdiction for the operation and maintenance of the Licensed Premises. The concessionaire is responsible for obtaining, amending and complying with the sign-offs, public assembly permits, DOHMH permits, fire department certificates and all other permits including, but not limited to, DEP, New York State Department of Environmental Conservation (NYS DEC), and/or other government agency approvals and permits necessary for any alterations to the existing premises.
19. The concessionaire will obtain all necessary approvals and permits for, and repair, service, and maintain, exhaust and fire suppression equipment.
20. The concessionaire shall be required to provide Americans with Disabilities Act (ADA) accessibility throughout the Licensed Premises, including, but not limited to, providing ADA signage, ADA accessible counters in the café area and ramps as needed. The concessionaire shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. The concessionaire is encouraged to exceed accessibility requirements whenever possible.
21. The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. Concessionaires of the City of New York [or of other governmental entities]

may be required to provide sick time pursuant to the PSL. Exhibit A, the Paid Sick Leave Law Rider, will be included in any concession agreement awarded from this RFP and will incorporate the PSL as a material term of such agreement. Please read Exhibit A carefully

RFP PROCEDURE

A. PROPOSAL SUBMISSION INSTRUCTIONS

Proposals should be **submitted electronically via e-mail** to the Project Manager, Hope Cohen, at hope.cohen@thebattery.org.

The following information should appear on the cover page of the proposal:

Proposer's Name & Address
Solicitation No.: 2023-M5-PM-SB
Proposals Due: Tuesday, May 2, 2023 at 3pm

Proposers unable to submit an electronic proposal may submit by U.S. mail or similar service an original hard copy proposal to:

The Battery Conservancy
90 Broad Street, Suite #1503
New York, NY 10004
ATTN: Hope Cohen

TBC cannot accept submissions in person or by courier, nor can it provide any signature confirming receipt.

If submitting a hard copy proposal:

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

No proposals should be submitted in plastic sleeves or spiral binders. Illustrations may be included. All plans are subject to NYC Parks' prior written approval. Oversized drawings may be submitted but must be accompanied by 8 ½" x 11" sectionals or reductions to 8 ½" x 11". No telegraphic or facsimile proposals will be accepted. The proposal will be evaluated on the basis of its content, not length.

Submit four (4) copies of your hard copy proposal, including four copies of all required attachments. The following information should be printed on the outside of the envelope:

Proposer's Name & Address
Solicitation No.: 2023-M5-PM-SB
Proposals Due: Tuesday, May 2, 2023 at 3pm

B. PROPOSAL SUBMISSION REQUIREMENTS

Each proposal submitted must meet the following requirements. Failure to comply will result in the automatic disqualification of a submission from further consideration.

Proposals must be received by 3pm on Tuesday, May 2, 2023. Proposals and modifications received after the time and date listed above will be considered late, will be returned to the proposer unopened and will not be considered for award, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules.

All proposers must submit a proposal that includes a fee offer for each operating year of the term of the Sublicense. At TBC's request, proposer shall submit documentation, satisfactory to TBC, demonstrating that it has the financial capability to pay the fees set forth in its proposal. Failure to provide such documentation will result in a determination of non-responsiveness.

Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, proposers responding to this solicitation are required to complete the attached Doing Business Data Form and return it with this proposal and should do so in a separate envelope. (If the responding proposer is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a proposer has failed to submit a Data Form or has submitted a Data Form that is not complete, the proposer will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the proposal is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the proposer has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

Organizations which hold 10% or more ownership of the entity must now be reported. Beginning in January 2018, an entity must submit a DBDF that certifies whether one or more organizations own or control 10% or more of the entity. Until such a DBDF has been received by Doing Business Accountability, a DBDF submitted with a filing status of No Change will not be accepted. To determine if Doing Business Accountability has received such a certification from your entity, contact doingbusiness@mocs.nyc.gov or at 212-788-8104.

Doing Business Data Form with Agency Name and Transaction ID (i.e. PIN, Contract number, PO number, etc.) filled in, Proposal box checked and Transaction Type Indicated.

Doing Business Data Form Q&A to answer commonly asked questions

C. PROPOSAL CONTENT GUIDELINES

Each proposal must include a completed checklist (form included at the end of this RFP) as its cover page and:

1. Fee Offer
 - Fee offer for each year of the operating term. The fee offer should state the highest sum the proposer is prepared to pay as a license fee, expressed as a guaranteed annual minimum fee versus a percentage of gross receipts, whichever is higher. TBC urges that there be an escalation of at least five percent (5%) per year (compounded annually) in the guaranteed minimum fee over the license term.
2. Operating Experience
 - Proposers should submit a resume or detailed description of the proposer's professional qualifications, demonstrating extensive experience in the industry, including any work with City agencies, and/or access to individuals and/or firms with such expertise. Include the names and addresses of all corporate officers of the entity submitting the proposal. If any principal owner and/or officer of the submitting entity is currently or has been a principal officer of another entity or entities within the last five (5) years, that entity or entities (including applicable tax identification numbers) should be identified as well.

Proposers should demonstrate experience with offsite catering and experience in food service in an outdoor setting.

- Proposers should attach a list of at least three (3) recent relevant references, with whom the proposer has previously worked and/or who can describe such matters as the proposer’s financial, operational and construction capability. One of the three references should be from a financial institution that has extended credit to the proposer. Include the name of the reference entity, a description of the nature of the listed reference’s experience with the proposer and the name, title, address, and telephone number of a contact person at the reference entity.

3. Planned Operations

- Proposers should submit a detailed operational plan for the entire Licensed Premises, including but not limited to intended use of the facility, hours of operation, services to be provided, menu items and merchandise to be sold, whether ethnically diverse and/or healthy food choices will be provided, a detailed list of all proposed prices and rates, maintenance, rubbish removal, cleaning schedules, safety and security plans, any plans to install energy efficient appliances or appliances that have the Energy Star seal of approval and/or water conserving appliances, and any plans to use “Green Seal” or other environmentally friendly products or devices. All plans, schedules, services, menu items, merchandise, prices and rates, and hours of operation are subject to TBC’s and DPR’s prior written approval.
- Proposers should submit an estimated number of full-time and seasonal employees and the positions these employees will fill.
- NYC Parks is charged with improving customer satisfaction with the services provided at facilities on parkland. Therefore, TBC encourages proposers to explain in their submissions the mechanisms they would use to measure customer satisfaction with the services offered by this concession. Such mechanisms might include customer evaluations or survey forms. Further, TBC Parks encourages proposers to explain how they would improve the quality of services offered if the above mechanisms indicate a need to do so.
- Proposers should include a comprehensive pro-forma income and expense projection for each year of operation. This pro-forma projection should include explanations for all the assumptions used in its formulation.
- TBC and NYC Parks will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community. NYC Parks will view favorably proposals that show a commitment to cooperate with and support park administrators, park users, other licensed concessionaires, and the community.

4. Financial Capability

- Proposers should include a financial statement or statements prepared in accordance with standard accounting procedures. Financial statements should include, but are not limited to, annual income and net worth (assets and liabilities), including a breakdown of liquid and non-liquid assets. Proposers should include supporting documentation of their financial worth, including but not limited to Certified Financial Statements, Balance Sheets and Income Statements and tax returns from the past three (3) years (corporate and/or personal).

Proposers should identify the intended source of all funds proposed to be invested in the Licensed Premises.

EVALUATION AND SELECTION PROCEDURES

Proposals will be evaluated by a selection committee composed of a minimum of three (3) TBC, NYC Parks or other City employees, in accordance with procedures established by the Franchise and Concession Review Committee, based on the criteria listed below. The concession will be awarded to the proposer whose submission the selection committee judges best overall based on these criteria.

A. PROPOSAL EVALUATION CRITERIA

In evaluating proposals, the Selection Committee members will use the following criteria:

- Fee Offer: 20%
- Operating Experience: 40%
- Planned Operations: 30%
- Financial Capability: 10%

B. EVALUATION PROCEDURES

TBC and NYC Parks will only consider proposals that meet satisfactory levels of the above criteria. TBC and NYC Parks are not required to accept the proposal that includes the highest fee offer. Acceptance of a proposal by TBC and NYC Parks does not imply that every element of that proposal has been accepted.

TBC and NYC Parks cannot consider any proposal that does not comply with the “Submission Requirements” section of this RFP. Proposals that do not meet these requirements will not be evaluated. When feasible, employees of TBC and NYC Parks may visit facilities operated by proposers.

OTHER GENERAL RFP REQUIREMENTS AND CONDITIONS

TBC and NYC Parks reserve the right to postpone or cancel this RFP or reject all proposals, if in their judgment they deem it to be in the best interest of The Battery Conservancy or the City of New York to do so.

Proposers are advised that TBC and NYC Parks have the option of selecting the proposer without conducting discussions or negotiations. Therefore, proposers should submit their best proposals initially, since discussions or negotiations may not take place.

Proposers are also advised that the award of this concession is subject to applicable provisions of Federal, State, and local laws and executive orders requiring affirmative action and equal employment opportunity.

All RFP submission materials become the property of TBC, the City of New York and NYC Parks.

TBC and NYC Parks shall not be liable for any costs incurred by proposers in the preparation of proposals or for any work performed in connection therein.

A proposer may submit a modified proposal to replace all or any portion of a proposal submitted up until the proposal submission deadline. TBC and NYC Parks will only consider the latest version of the

proposal. Late proposals and late modifications will not be considered for evaluation, except as provided for in Section 1-13(j)(2)(i) of the Concession Rules. Proposers may withdraw their proposals from consideration at any time before the proposal submission deadline by submitting written notice to TBC and NYC Parks. A proposer may not withdraw its proposal before the expiration of forty-five (45) calendar days after the date of the opening of proposals; thereafter a proposer may only withdraw its proposal by submitting written notice to NYC Parks in advance of an actual grant of a concession.

Technical addenda issued by TBC and NYC Parks will be the only authorized method for communicating clarifying information to all potential proposers. Proposers should contact TBC before submitting a proposal to verify that they have received any addenda issued. Proposers shall acknowledge the receipt of any addenda in their proposal submissions.

Proposers should be aware that, upon the request of NYC Parks or TBC, proposer(s) will be required complete an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principal Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services (MOCS). In addition, any person or entity with at least a 10% ownership interest in the submitting vendor (including a parent company), is required to complete PASSPort Questionnaires (Principal Questionnaire for any person and Vendor Questionnaire for any entity with at least a 10% ownership interest in the submitting vendor). The concession award will be subject to completion of the PASSPort questionnaires and review of certain information contained therein by the Department of Investigation. To submit the questionnaires to MOCS, create an account and submit the vendor enrollment package in PASSPort through the NYC website at <http://www.nyc.gov/passport>

The Comptroller of the City of New York is charged with the audit of concession agreements in New York City. Any person or entity that believes that there has been unfairness, favoritism or impropriety in the proposal process should inform the Comptroller's Office of Contract Administration, 1 Centre Street, Room 835, New York, New York 10007. This office may be reached at (212) 669-2323.

EXHIBIT A:

NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. Introduction and General Provisions.

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

2. The Contractor agrees to comply in all respects with the ESSTA and the DCWP Rules, and as amended, if applicable, in the performance of this agreement. The Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the ESSTA in performance of this agreement may result in its termination.

3. The Contractor must notify (with a copy to DCWP at ComplianceMonitoring@dcwp.nyc.gov) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to www.nyc.gov/PaidSickLeave for resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.

1. An employee who works within the City must be provided paid safe and sick time.¹ Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

¹ Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee

exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

F. *Records.* An employer must retain records documenting its compliance with the ESSTA for a period of at least three years and must allow DCWP to access such records in furtherance of an investigation related to an alleged violation of the ESSTA.

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.

3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous safe and sick time. The ESSTA provides minimum requirements pertaining to safe and sick time and does not preempt, limit, or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT B:

NYC Parks license to The Battery Conservancy for New Amsterdam Plaza and Pavilion

Please see attached PDF document.

EXHIBIT C: New Amsterdam Plaza and Pavilion Licensed Premises



Checklist of Items to be Included in Proposal

Please circle or fill out where applicable and include this form as the cover page of your proposal.

Name of Proposer: _____ **Solicitation #**

YES/NO	
Y/N	You have included the following information: Proposer Name: Address: Solicitation #: Proposal Due Date and Time:
Y/N	If submitting a hard copy proposal, you have submitted four (4) copies of your proposal.
Y/N	You have submitted a fee offer for each year of the License term.
Y/N	You have submitted a resume or detailed description of your professional qualifications .
Y/N	You have included a list of at least three (3) recent relevant references .
Y/N	You have submitted a detailed operational plan for the entire Licensed Premises.
Y/N	You have included a financial statement or statements prepared in accordance with standard accounting procedures.
Y/N	You have identified the intended source of all funds proposed to be invested in the Licensed Premises.
Y/N	You have acknowledged the receipt of all addenda that have been issued by TBC and/or NYC Parks for this solicitation.