REQUEST FOR PROPOSALS

To manage and operate a temporary, public outdoor market in Bryant Park in 2021

February 25, 2021

Bryant Park Corporation
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**I. Introduction to Bryant Park**

Bryant Park Corporation (BPC), a not-for-profit company, has managed Bryant Park for over thirty years under contract with The City of New York (the City).

The ongoing mission of BPC is to create a rich and dynamic visual, cultural and intellectual outdoor experience for New Yorkers and visitors alike; to enhance the surrounding neighborhood by continuously improving the Park; to enhance the Park's status as a prime destination for New Yorkers and visitors by presenting a meticulously maintained venue for free entertainment events year-round; and to foster a safe and vibrant atmosphere by attracting visitors at all hours when the Park is open.

BPC operates Bryant Park with private sector techniques and management methods, providing sanitation and security services, spotless restrooms, colorful gardens, and seasonal horticultural installations in addition to maintaining the only lawn in Midtown Manhattan that is open to the public. BPC also works with civic-minded patrons to offer myriad amenities, free educational programs, and quality entertainment attracting people of all ages.

Visitors Services are a cornerstone of BPC’s efforts to assure the overall quality of the Bryant Park atmosphere and experience. Careful selection and management of concessionaires ensures that Park visitors have access to high quality food and merchandise. BPC strives to improve the Park each year, paying close attention to urban planning, park, and other models and constantly seeks innovations.

Bryant Park is located in midtown Manhattan, between 42nd and 40th Streets, Sixth and Fifth Avenues, to the west of the New York Public Library's main building.

Website: [http://www.bryantpark.org](http://www.bryantpark.org)

**II. Proposal Overview and Background of Markets in Bryant Park**

During the 2020-2021 winter season, BPC was able to host a holiday market that included all required health and safety precautions, including revised layouts, PPE regulations, enforced kiosk capacities, public hand-washing sinks, and enhanced sanitizing measures. The holiday market provided New Yorkers with a safe way to support local businesses during these difficult times.

BPC is seeking proposals (“Proposals”) from qualified firms (“Proposers”) by this request (“Request” or “RFP”) to manage and operate a temporary public outdoor market subconcession (“Subconcession”) in Bryant Park in 2021. The operation of this Market is intended to be of a premium quality in terms of both booth design and items for sale. BPC is seeking proposers with a strong background in the management of outdoor markets specializing in unique arts, crafts, food and gifts of high quality. BPC expects an extremely high-quality market, focusing on hand crafted items, art, unique gifts, and finely crafted jewelry. BPC will also permit the sale of food and beverage items.

The overall appearance of the Market will be an important aspect of BPC’s evaluation of proposals. The concessionaire may enter into agreements with individual vendors to operate the vending booths. The successful concessionaire will be permitted to charge the individual vendors a BPC-approved participation fee. The proposed participation fee should be included in the proposal.

All proposers should include a photo or visual schematic of the Market’s layout, including the dimensions and type of individual vending booths that will be used. The number, location, configuration, and list of participating vendors, as well as the items to be sold and operating hours of each vendor, are subject to BPC’s’ approval. BPC reserves the right, at any time during the term of the concession, to reject any vendor that it deems inappropriate for the Market.
It is the goal of the BPC to work closely with the chosen Proposer to create a Subconcession that is successful and enhances the atmosphere of Bryant Park and this vibrant neighborhood. The Subconcession should provide an amenity for those who work and live in the area as well as those who visit the Park and should do so with all required health and safety precautions.

III. Proposal Requirements
Proposers should submit a detailed operational plan for the entire Licensed Premises including:

- Intended use of the facility
- 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
- Internal controls
- Mechanisms to measure customer satisfaction
- Detailed list of all proposed fees and prices
- Landscaping/horticulture plans
- Maintenance, snow, rubbish removal, and cleaning schedules

Hours of Operation The concessionaire may only operate the Licensed Premises when the park is open. All days and hours of operation are subject to BPC’s’ prior written approval.

In the past, BPC has approved the following hours of operation for the Market: 10am-11pm

Internal Controls Throughout the License term, the concessionaire will be required to maintain a revenue control system to ensure the accurate and complete recording of all revenues the concessionaire receives.

Alcoholic Beverages Beer, Wine, and Cider 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/or in a cordoned-off area if exterior seating is proposed and must be consumed on the Licensed Premises within designated areas. All efforts must be made to keep alcohol consumption discrete. 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.

Staff The concessionaire will be required to have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession.

Storage BPC makes no representations that there is adequate storage space at the Licensed Premises. The concessionaire shall be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession.

Maintenance During load in, load out and the operating season the concessionaire will be required, at its sole cost and expense (or through arrangements with third parties), to install, operate and manage the Licensed Premises in good and safe condition and in accordance with industry standards.
Snow, Rubbish Removal & Recycling During load in, load out, and the operating season, the concessionaire will be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Licensed Premises and the area within fifty (50) feet of the Licensed Premises.

Signage and Advertising All signage at the Licensed Premises, including signage which includes Concessionaire’s name, trade name(s), and/or logos, is subject to BPC’s approval. An item list and price list, approved by BPC, must be displayed at all times and for all items that are sold at each vending booth.

Merchandise The concessionaire/vendors may sell merchandise; however, proposers should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If the successful proposer/vendors want to sell merchandise that uses the City’s trademarks, the successful proposer/vendors will be required to purchase merchandise from authorized licensees of the City of New York. BPC and Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products, or non-park-related events. All prices and merchandise to be sold are subject to BPC and Parks’ approval.

The knowing sale of counterfeit or unlicensed merchandise at this concession will result in the immediate termination of the license agreement and seizure of the security deposit.

Naming of the Concession Proposers should be aware that Parks may require that the City own the portion of any new name selected by the successful proposer for the Licensed Premises that indicates 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 Parks’ property. Parks reserves the right to approve of any name selected by the concessionaire for the concession.

Utilities BPC makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. The concessionaire will be required to connect to and/or upgrade any existing utility service or create a new utility system which may include a generator and obtain the appropriate permits and approvals.

Drought & Water Conservation Issues The concessionaire will be required to adhere to all DEP directives and restrictions regarding drought and water conservation issues during the License term.

Environmental Considerations As a protector and provider of green spaces, BPC and Parks are deeply committed to respecting the environment. Therefore, all proposed operational plans should include a detailed description of environmentally friendly practices planned for the Licensed Premises.

Security Pursuant to a plan approved in writing by BPC, the concessionaire, at its sole cost and expense, shall be responsible for all security at the Licensed Premises.

Safety Since safety is of the utmost concern, proposers with prior experience in operating this type of facility or similar facilities should submit their personal and/or company safety record.

Community Relations BPC will view favorably proposals that demonstrate an awareness of the role of the concession as an integral part of the surrounding community.

Americans with Disabilities Act (“ADA”) Compliance The concessionaire shall be required to comply with the ADA in the performance of the license agreement, as applicable.
Customer Service BPC expects the concessionaire to create and maintain a high-quality amenity for the public. BPC encourages proposers to implement customer service mechanisms that will enhance and maintain the satisfaction of patrons.

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 BPC with at least two (2) telephone numbers for contact purposes.

Inspections Inspectors from BPC will visit the site unannounced to inspect operations and ensure proper maintenance of the concession site. Based on their inspections, BPC may issue directives regarding deficiencies the concessionaire will be obligated to rectify in a timely fashion.

Access to Licensed Premises The concessionaire will be required to provide BPC with full and free access to the Licensed Premises to ensure BPC’s satisfaction with the concessionaire’s compliance with the terms of the License Agreement.

No Exclusive Vending Rights Proposers should note that the license agreement will not grant the concessionaire exclusive rights to sell in the park in which the Licensed Premises are located.

The Market Proposers should submit a menu and price list in their proposals that demonstrates quality, variety, and affordability. Proposers should include some low-cost items on their menus. BPC will view favorably proposals that feature vendors with high quality specialty and artisanal foods, as well as proposals that include local vendors. BPC will also view favorably proposals which incorporate diverse and/or healthy food choices, such as salads, fresh fruit, yogurt, nuts, granola bars, protein bars, water, juices, smoothies, etc. All prices and menu items are subject to BPC’s prior written approval. The concessionaire will be required to maintain adequate inventory to assure a constant supply of food and beverages. 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 Market if each vendor has obtained the appropriate, valid permits and authorizations required by DOHMH. A current Food Service Establishment permit is required for each establishment and each operation must be in compliance with Article 81 of the Health Code. [https://www1.nyc.gov/assets/doh/downloads/pdf/about/healthcode/health-code-article81.pdf](https://www1.nyc.gov/assets/doh/downloads/pdf/about/healthcode/health-code-article81.pdf).

DOHMH Information In addition to a Parks’ license, a valid DOHMH permit is required to operate. To obtain a DOHMH permit, contact the Citywide Licensing Center, 42 Broadway, 1 floor, Monday through Friday 9:00am to 5:00pm. Note: Offices are closed during City/Public Holidays. [https://www1.nyc.gov/site/doh/business/food-operators.page](https://www1.nyc.gov/site/doh/business/food-operators.page). It is recommended that all documentation be submitted at the same time to expedite the process. Any questions regarding DOHMH permits can be referred to 646-632-6001. Vendors who are not in compliance or who do not obtain a permit will not be permitted to operate.

DOHMH Letter Grades: Food Facilities Proposers should note that the food vendors may be subject to a Department of Health and Mental Hygiene letter grading program.

ADDITIONAL REQUIREMENTS DURING THE TERM OF LICENSE

1. The concessionaire will be required to install, operate and manage the Licensed Premises as a concession for the use and enjoyment of the general public.
2. The concessionaire will be required to submit a security deposit of $25,000 of the highest year’s guaranteed minimum license fee, which will be required for the duration of the term of the license.

3. The concessionaire will be required to carry Commercial General Liability insurance in at least Two Million Dollars ($2,000,000 per occurrence), Five Million Dollars ($5,000,000 aggregate), and statutory limits of Worker’s Compensation, Employer’s Liability, and Disability Benefits Insurance. The Commercial General Liability insurance will be required to name BPC and the City of New York, including its officials and employees, as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form GC 20 26, and the City's limits will be no lower than concessionaire's. Unless otherwise approved in advance in writing by Parks, the concessionaire shall carry Commercial Automobile Liability insurance in the amount of One Million Dollars ($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.

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 the City and BPC as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

In the event the Licensee shall permit sublicensees or others to serve alcohol on the Licensed Premises, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars ($2,000,000) per occurrence, and name the City and BPC as additional insured. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations.

Proposers are on notice that the City and BPC 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.

4. The concessionaire will be required to submit an annual statement of gross receipts from all categories of income from the Licenses Premises in a format approved by BPC.

5. The concessionaire will be required to pay all taxes applicable to the operation of the concession.

6. The concessionaire will be responsible for regular pest control inspections and extermination, as needed.

7. The concessionaire will be prohibited from cutting down, pruning, or removing any trees on the Licensed Premises without prior written approval from Parks and BPC. The concessionaire will report dead and diseased trees to Parks.

8. The concessionaire and all participating vendors will be required to cooperate with BPC and Parks during special and other unanticipated events.

9. Smoking of any tobacco product or electronic cigarette or non-tobacco smoking product is strictly prohibited at the Licensed Premises except on sidewalks along the park perimeter. Concessionaire shall adhere to and enforce this policy.

10. Pursuant to Parks’ policy citywide, the concessionaire will be prohibited from selling 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.

11. The selling and/or advertisement of cigarettes, cigars, electronic cigarettes or any other tobacco products and non-tobacco smoking products is strictly prohibited. The concessionaire will be required to adhere to and enforce this policy.

12. The concessionaire will be required to retain a professional licensed engineer or registered architect approved by Parks for design and filings of proposed capital work and to oversee the entire construction project.

13. For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, the concessionaire will be required to maintain up-to-date Petroleum Bulk Storage (“PBS”) registrations with NYS DECS and register such tanks with the DEP.

14. The concessionaire will be required to obtain and maintain any and all necessary approvals, permits, and licenses for the construction and lawful operation of this concession. This may include, but is not limited to a Temporary Certificate of Occupancy and/or Temporary Public Assembly permits from Department of Buildings.

15. The concessionaire will be responsible for employing Market Manager(s) to oversee the Market. A Manager must be on site during all hours of operation and must be available by phone or pager (24 hours a day) during the Market’s operation.

16. The concessionaire must obtain the prior written approval of BPC prior to entering into any marketing or sponsorship agreement. In the event that the concessionaire breaches this provision, the concessionaire shall take any action that BPC may deem necessary to protect BPC’s interests.

17. The concessionaire and all vendors will be required to comply with all City, State, and Federal laws relating to access for persons with disabilities.

18. The exact hours and days of operation of the Market are subject to Parks and BPCs’ prior written approval.

19. The concessionaire and all participating vendors will be required to purchase, supply, or otherwise obtain use of all equipment, fixed and non-fixed, necessary for the operation of this Market, including but not limited to vending booths, tables, and chairs. All vending booths must be kept in good and clean condition. BPC reserves the right to require replacement of vending booths that are in poor condition.

20. Each individual vending booth and any equipment or materials attached to such booth shall be both of a design and color approved by BPC.

21. At least 60 calendar days prior to the start of each season, the concessionaire will be required to provide BPC with a list of all proposed vendors participating in the Market along with a description and price of the items to be sold, estimate of the approximate space used per participating vendor, a site plan detailing the location of each vending booth, and any required vendor participation fee. The exact location and configuration of the Market is subject to BPC and Parks’ approval and individual vendors may only vend in the location specified in the license. BPC reserves the right to reject at any time during the term of the concession any participating vendor it deems inappropriate for the Market. All food, beverage, merchandise, or supply of any kind must comply with all health code regulations.
22. BPC must approve all items to be sold and their price ranges. A price list, approved by BPC, must be prominently displayed at vending booths at all times and for all items.

23. The concessionaire will be responsible for ensuring that all participating vendors comply with the applicable requirements of the sublicense agreement. If a participating vendor does not comply with the terms of the license, BPC may direct the concessionaire to terminate that vendor’s operations.

24. The concessionaire will be responsible for directing all vendors to maintain access lanes where necessary. BPC will retain the authority to guarantee unimpeded pedestrian access along the sidewalks and pathways affected by the Market. Neither the concessionaire nor any of the participating vendors shall block sidewalks, entrances or exits of the permitted premises, park on any sidewalks, and/or leave vehicles on the permitted premises overnight, unless otherwise permitted. The concessionaire shall direct any participating vendors to place their equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times.

25. The concessionaire will be required to indemnify the City and TBC for claims arising out of the concessionaire’s operations under the sublicense Agreement, pursuant to a provision to be included in the sublicense Agreement.

26. 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 PSLL. Exhibit A the Paid Sick Leave Law Rider, will be included in any concession agreement awarded from this RFP and will incorporate the PSLL as a material term of such agreement. Please read Exhibit A carefully.

The operator of the market will be responsible for:

**Management**
- Work with BPC across all categories and gain advance approval from BPC
- Implementing a process for selection of high-quality vendors
- Kiosk rental agreements with vendors
- Oversight of vendors during application, selection, operation, load-in and load-out
- Dedicated daily liaison for project management with BPC
- Dedicated daily onsite management
- Daily communication with BPC
- Regular reporting of financial, usage/demographic and other data
- Hire, train, manage any temporary staffing
- Approval of merchandising plan and display aesthetics of each vendor
- Research and propose innovative practices, including design, customer service, technology, etc.
- Design and implementation of all required health and safety procedures concerning (but not limited to) the COVID-19 pandemic put in place for visitor, vendor, and staff protection

**Financial**
- All costs associated with operation, including: design, permitting, construction, maintenance, operations, staffing, removal, etc. of operation, including but not limited to: booth structures, wayfinding signage, etc.
- Insurance

**Design/Aesthetics**
• Design all aspects, including high-quality, attractive structures for the booths
• Uniforms for all staff
• Attractive and high-quality lighting

Production/Operations
• Procurement, production, installation, maintenance, and removal of booth structures
• Printing and installation of all graphics, including way-finding systems, sponsor recognition, informational signage, etc.
• Oversight of daily aesthetics, public access, operation, site maintenance of market, including: security, sanitation, power, etc.
• Power and cabling, and connection to city services, waste/grease removal, and other utilities
• Securing all necessary city, state, federal and other permits and licenses
• Provide security services

Marketing/Sponsorship
• Marketing/advertising the market to the public through special offers, coupons, deals, advertising
• Cooperation on events, promotions, integrations from BPC and BPC sponsors

IV. Sublicense Agreement
If a satisfactory Proposal is received, it is anticipated that the BPC will enter into a sublicense agreement (the "Sublicense Agreement") with the successful Proposer for an initial period of one year commencing on the execution of the Sublicense Agreement.

V. Financial Requirements
An interested Proposer must propose an attractive financial structure including an amount payable to BPC, for each year of the operating term. The fee offer should state the amount each proposer is prepared to pay as a license fee, expressed as a guaranteed annual minimum fee verses a percentage of gross receipts, whichever is higher.

The financial structure must also include a budget with expenses and income for the operation or operations throughout the term, as well an annual escalation schedule for the payment to BPC.

VI. Summary of Other Significant Terms of the License Agreement
The following is a brief summary of the terms that will be written into the license agreement. The full language of any such agreement supersedes this RFP.

Final approval
The final agreement between the parties is subject to review and final approval by the Commissioner of the Department of Parks and Recreation of the City of New York.

Security Deposit
An annual security deposit equaling $25,000 is required.

Insurance
Operators will need to provide liability insurance to cover a minimum of $2 million per occurrence, naming Bryant Park Corporation and the City of New York as additional insureds. Workers compensation of at least $1 million is also required.

Term of License
The license term will be for one year, subject to possible renewal with three 1-year renewal options. License term is subject to earlier termination.
Assignment and sublicensing
The license will not be assignable, nor may any of the licensee’s rights be sublicensed, without BPC’s (and the City’s) written consent.

Design, Production, Aesthetics
All design, production, and general aesthetics will be coordinated in close partnership with BPC’s internal design team. BPC may require operator to use BPC-designed elements. BPC shall have final and sole approval on all design decisions.

Sponsorship and Pouring Rights
Negotiations with any potential sponsor for any product or service that may be promoted, featured, offered exclusively of competitors or identified by brand name in any way within Bryant Park are the exclusive right of BPC and no authority is given to any operator to attempt to represent BPC in any sponsorship or promotional transaction.

All revenues deriving from sponsorship, product endorsement, promotion and pouring rights in any way within the park and the kiosks remain the property of BPC.

When necessary, BPC may require the operator to cooperate with, and participate in, promotional events for Bryant Park sponsors. This may involve exclusive rights that favor the specified product over their competitors and such an agreement negotiated by BPC will take precedence over any arrangement, contract or negotiations that the licensee may have or be considering with any other competing products, vendors or suppliers.

Closure for Events, Maintenance, Repair, and Construction
BPC reserves the right when necessary to temporarily close any part of Bryant Park and any operation or amenity with advanced written notice but without compensation to the operator beyond forgiveness of minimum guaranteed fees for the period closed. No additional compensation will be made for lost sales during the period of closure.

The NYC Department of Parks and Recreation (DPR) has the right to temporarily close the property and any amenity for maintenance, repair and construction, or in the interest of public safety. No additional compensation will be made to the operator for lost sales during the period of closure.

Pricing
All proposed pricing, including kiosk rental terms, must be submitted in advance to BPC for approval and all price increases and other changes are subject to approval.

Utilities
These will be paid by the licensee based upon actual usage.

Permits and Licenses
The licensee will be entirely responsible, at their cost, for obtaining all necessary government/regulatory approvals and maintaining all permits and licenses throughout the term.

Garbage and Waste
All waste must be stored in a secure place out of sight of the public and inaccessible to vermin.

All garbage/waste, including food waste, grease, water, etc. resulting from the market is the responsibility of the operator who must contract with a private carter to remove all garbage/waste on a daily/regular basis at the operator’s expense.
VII. Criteria for Selection and Application Requirements
BPC will require financial information, including, but not limited to, the most recent audited financial statement, and may request further information before awarding operation.

Applicants should supply as much information as they consider necessary to fully describe the concept they are proposing. This may include plans, diagrams, renderings and photography of existing or proposed operations.

Background information regarding the applicant’s past and existing temporary market operations is invited, including links to websites, photography, press kits, media coverage, reviews and credentials.

Successful applications will be chosen based upon the following criteria:

Financial payments to BPC.
- Quality of services and operations
- Applicant’s background and experience, and financial capability
- High operational standards, including Department of Health ratings, cleanliness of other locations
- Design standards, appearance, and visual contribution to Bryant Park
- Company interest in enhancing Park visitors’ overall experience
- Health and safety proposals concerning the COVID-19 pandemic and its effect on operations

While the amount of the bid will be of importance in selecting the operator, other factors, including (without being limited to) the overall effect on Bryant Park, aesthetics, and visual interest, will be accorded weight in the making of the award. BPC reserves the right to award the Subconcession to an applicant other than the highest bidder, to defer making the award until a later date, to solicit further bids, to withdraw this Request for Proposals entirely, or to change the form and content of the agreement ultimately entered into.

Disclaimer
Nothing contained in this RFP, or any materials distributed together with this RFP, shall be binding on BPC or DPR in any way. BPC will not be bound except by a duly authorized agreement, executed and delivered by both parties.

VIII. Submission Details and Timeline
Submission details
Detailed written proposals are invited from qualified operators who have prior relevant experience and who currently operate comparable markets in New York City. For more information, prospective proposers may contact Izzie Deixel, Deputy Director of Operations, at the Bryant Park Corporation, at 917-438-5155, or ideixel@urbanmgt.com.

The complete proposal should be submitted via email to Izzie Deixel at ideixel@urbanmgt.com.

Deadline for application: 10:00 a.m., Monday, March 8, 2021
Select applicants for consideration will be contacted for further discussion.
EXHIBIT A: PAID SICK LEAVE LAW CONTRACT RIDER

Introduction and General Provisions

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. Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL. Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee
is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- 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;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, 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 sick time to an employee because of non-compliance with such a policy.

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 sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- 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 his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
• 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
• a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA’s website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

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

Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed $500 for a first violation, $750 for a second violation within two years of the first violation, and $1,000 for each succeeding violation within two years of the previous violation.

More Generous Polices and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous 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 sick time. The PSLL provides minimum requirements pertaining to 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 sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.