



**Request for Proposal (RFP)  
Food Service Operator at  
Cazenovia Golf Course Concessions (aka "Concession Stand")**

**Overview**

The Buffalo Olmsted Parks Conservancy ("BOPC") is seeking to establish a creative partnership with a reputable lessee/operator for the Cazenovia Golf Course Concessions (aka "Concession") located in Cazenovia Park. The Concession stand currently houses an Operator. BOPC is seeking one experienced lessee/operator ("Operator") for an annual agreement with the option to renew. This is a city-owned and BOPC-managed property; therefore, all agreements must be in accordance with City regulations.

**Purpose**

In 2019, BOPC renegotiated an agreement with the City of Buffalo (the "City") to provide maintenance for the Buffalo Olmsted Parks and management of the facilities therein. Pursuant to City of Buffalo regulations a request for proposal (RFP) shall be circulated at the expiration of every operating agreement. A new Operator agreement is expected to be in place April 15, 2024, for operational engagement on or about May 1, 2024.

**Olmsted, BOPC, & Facility Background**

*The Olmsted-Buffalo Story*

Over 150 years ago, Frederick Law Olmsted came to Buffalo and with the consent of its leaders designed a system of parks in Buffalo connecting green spaces with parkways and circles to allow every resident to enjoy nature. His egalitarian vision sought to offer everyone – regardless of age, race, or socio-economic status – easy access to beauty and green space for healthy recreation and tranquility. The Olmsted Park System is recognized and renowned as the first one designed in the United States.

*Today's Park System*

The Olmsted Park System is the centerpiece of Buffalo's recent resurgence and represents nearly 50% of Buffalo's parkland. As Olmsted wanted his parks to be used by the masses, that fact remains evident as with the recent pandemic, parks are now busier than ever. Park activity in Buffalo is a dynamic blend of active and passive activities, and use is heavy at times prompting a sentiment that the "parks are being loved to death." Sports fields, playgrounds, turf areas and courts are all heavily utilized and require ongoing care and repair, coupled with preservation and restoration of the historic landscapes and features require(s) sustainable funding. That is where BOPC comes in.

### *Sustaining the System*

Beginning as a friend's group, BOPC evolved from pure preservation advocacy by voice in 1978 to include in-park active stewardship by hand in 2004. For more than one hundred years, the city cared for this valuable community asset, but as population and tax revenue declined, it became difficult to maintain the standard that Olmsted envisioned, and residents deserved. In 2004, BOPC embarked on a public-private partnership with the city to perform management and maintenance services for the park system in addition to its advocacy, restoration, planning and volunteer efforts.

Today, BOPC is the advocate and active caretaker for the 850+ acres of the Olmsted Park System which now sits on the National Historic Register. BOPC has demonstrated its value in the community, raising over \$35 million in park invested support, and has retained its role in this public-private partnership with a renewed partnership agreement that spans 2019-2031. The current mission of BOPC, as a 501(c)(3) not-for-profit membership organization, is stewarding the City of Buffalo's historic Olmsted Park and parkway system to welcome and benefit all.

### **Site Location Information & Premises**

Mailing Address: 1 Willink Ave, Buffalo, NY 14210 (Attachment A)

#### About the Premises

The current Cazenovia Golf Club House was built in 1964. Since then, the men's club has added a large awning that covers the front picnic area of the building that is utilized as an additional dining area. The inside of the building is used by both BOPC and the Operator. BOPC uses a corner area for a golf check-in desk. The Operator is permitted to arrange the inside common dining area in coordination with BOPC. The Concession preparation area is separated from the open space by a roll down window that is locked when not in use. The Concession preparation area and dining area is the full responsibility of the Operator.

#### Current Operator Arrangement

The current leaseholder has been in the facility for over a decade. Most equipment, vending machines and furniture is owned by the current leaseholder (Attachment B). Should a new Operator be selected all such items will be removed by current leaseholder.

#### Parking and Deliveries

Next to the building there is limited parking with spaces for handicapped vehicles only, therefore the Operator will need to have all staff, including management, park in the lot west of the building (Attachment A). Operator may use the driveway for 15-minute loading and unloading.

All deliveries of stock items, refreshments and other items used or sold by the Operator shall be made to the least inconvenience of Cazenovia Park operations. BOPC reserves the right to alter any delivery/schedule at any time, with prior notice to Operator should arrangements need to be made. BOPC is not responsible for attending to, nor assisting with, Operator deliveries.

### Concession Kitchen Area

All equipment and equipment repair in the kitchen area is the responsibility of Operator.

### Bathrooms

As the facility is a public park building, Operator shall comply with allowing public restroom access during business hours of operation.

### Operator Responsibilities

- All cost of operations and management
- All cost of goods and services
- Licenses for operation, sales taxes on products or services that are provided hereunder, including, but not limited to, all federal, state, and local taxes, New York State Worker's Compensation payments, unemployment insurance, payroll, and other taxes with respect to services provided.
- 45% of the utilities (gas and electric) for the building.
- Cleaning and general upkeep of entire building including the public restroom.
- Any costs associated with equipment repair, general improvements, and facility upgrades.
- Trash disposal and recycling.

*A sample agreement is attached - Attachment C*

### Proposal Format

Successful proposals will include the following information:

#### SECTION A: Profile and Description of Respondent (weighted at 40% in BOPC evaluation)

- Name and address of respondent.
- History and description of business
- Business license and/or applicable permits
- Business References
- MWBE qualifications, if/as available

#### SECTION B: Business Plan (weighted at 30% in BOPC evaluation)

- Tentative hours of operation
- Sample Menu
- Projected Revenue

#### SECTION C: Bid amount (weighted at 30% in BOPC evaluation)

- Bid amount for the 2024 and 2025 seasons.

**2024 RFP Schedule**

<b>Distribution</b>	<b>March 22nd</b>
<b>Walkthroughs</b>	<b>April 3rd (RSVP: <a href="mailto:Beth@bfloparks.org">Beth@bfloparks.org</a>)</b>
<b>Submissions Due</b>	<b>April 11th (no later than 4pm)</b>
<b>Decision</b>	<b>April 15th</b>

**RFP Submission**

RFP responses should be directed to Beth Downing, Deputy Director of Administration/Chief Financial Officer **by April 11, 2024**, no later than 4pm, and can be sent by either electronic or hardcopy as noted below:

*Electronic* submissions can be sent to [Beth@bfloparks.org](mailto:Beth@bfloparks.org) with “RFP: Operator – Cazenovia Concession” in the subject line.

*Hardcopy* submissions can be directed to:

Buffalo Olmsted Parks Conservancy, Inc.  
Attn: Beth Downing, Deputy Director of Administration/Chief Financial Officer  
84 Parkside Ave.  
Buffalo, NY 14214

*An evaluation of the submitting firms will be conducted internally, and a list of businesses that meet criteria may be interviewed, as necessary. BOPC reserves the right to reject proposals or parts thereof. The BOPC also reserves the right to waive irregularities and inconsistencies or take whatever other action that is in the BOPC’s best interest. Statement of Non-Commitment Issuance of this RFP does not commit the Buffalo Olmsted Parks Conservancy, Inc. to award a contract or to pay any costs incurred in preparation of proposals responding to the RFP. Buffalo Olmsted Parks Conservancy, Inc. reserves the right to reject any or all proposals and re-advertise. All proposals become the property of the BOPC.*

**Attachment A**



Premises include area outlined in red with the exception of the areas utilized by the BOPC for golf operations, including a portion (approximately 45% of the main room of the building), the golf storage area.

## Attachment B



**The following items remain and are available for operators' use** Tables, Chairs, Ceiling Fans, Counters, Light Fixtures any affixed utilities, such as sinks, drains, etc.

*A walkthrough of the kitchen area and amenities would be discussed to identify any other permanent or replacement items.*

## ATTACHMENT C

### BUFFALO OLMSTED PARKS CONSERVANCY, INC. CAZENOVIA CONCESSION OPERATING AGREEMENT

THIS AGREEMENT is made by and between the BUFFALO OLMSTED PARKS CONSERVANCY, Inc. a not-for-profit corporation, 84 Parkside Avenue, Buffalo, NY 14214 (hereafter referred to as "BOPC") and TBD (hereafter referred to as "Operator").

Whereas the City of Buffalo ("City") is the sole property owner and landlord for Cazenovia Park and the Cazenovia Park Golf Concession Building and requires primary approvals for all proposed alterations or improvements to the building or property, and

Whereas BOPC as operator of the parks by contract with the City warrants and represents that it has authority to enter into agreements for concessions operations in Cazenovia Park, including the occupancy and operation of the Cazenovia Golf Course Concessions (aka the concession area), located in Cazenovia Park, City of Buffalo, NY, hereinafter referred to as "Premises" and

Whereas BOPC has, following a competitive request for proposals process, selected TBD as sole caterer/restaurateur on record effective TBD, to manage the Premises and administer all of the amenity and concession facilities on the Premises and other restricted use areas as identified (see map attachment)

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

#### **General Terms and Conditions**

1. Premises - The Premises which are subject to this agreement shall be the closed off concession area located on the northside of the building. Additionally, the Premises includes restricted usage of the facilities public space.
  - I. Restricted Usage - The covered patio area off the building's entrance can be utilized by the Operator during approved hours set by BOPC with appropriate signage for alcohol service limits or boundaries.

The open dining area inside the building can be utilized by the operator with BOPC approval.

2. Purpose: The Operator shall use the Premises and its Restricted Areas for all lawful purposes with the main function being a Concession Stand, which may serve food, beverages, and alcoholic beverages to the public. The Operator may additionally have the ability to sell all concessions on the Golf Course providing all necessary licenses/permits and approvals are in place. All events hosted by the Operator must be coordinated through BOPC. The Premises may be used from TBD to TBD (approximately May 1 through October 31<sup>st</sup> - golf season).

The operator shall not allow the use of the Premises for any other purpose without the express, written consent of BOPC, which consent may be withheld at the sole discretion

of BOPC. BOPC may disapprove a use proposed by Operator if such use violates park rules and regulations or any municipal, state, or federal law, or is not within the theme or character of the park, or sacrifices public health, safety, or welfare, or for any other reason.

3. Property Condition and Due Diligence - The Premises are provided to the Operator in "AS IS" condition as of the Effective Date. The Operator will be responsible for performing its own due diligence in assessing the current condition of the building and site prior to executing this Agreement. A schedule of routine maintenance will be determined between the Operator and BOPC as to general responsibilities refer to Section 26.
4. Agreement Term - The term of the Operator's use of the Premises shall be for a period from the Effective Date through October 31<sup>st</sup>, 2025. The Term may be extended for up to three additional years by mutual agreement of the Operator and BOPC, and with community input considered, by mutual agreement to be confirmed in a written amendment to this Agreement signed by Operator and BOPC, no later than January 1, 2026.
5. Fees - In consideration of the right to use the Premises as provided in this Agreement, Operator shall pay a seasonal fee to BOPC of \$TBD, hereinafter referred to as the "Base Fee." Operator shall only pay the base fee when concessions are open, tentatively May through October. The amounts payable by Operator to BOPC in two installments payable as follows: July 15<sup>th</sup> - \$TBD; October 31<sup>st</sup> - \$TBD.
6. Reports and Annual Financial Review
  - I. The Operator is responsible to keep and may be required by BOPC and City to submit, an Annual Report including but not limited to the following: Revenues, Expenses, Financial variance report against budget - monthly / year to date, Marketing promotions, Routine maintenance expenses, Non-routine expenses, Authorized capital improvements, Insurance claims, Litigation and Safety and environmental incidents.
7. Concession Business Plan
  - I. The concession operations to be conducted by the Operator must adhere to a park ambiance in its concept, theme, and promotional image. As of 2024, the BOPC's approved concession business plan is a casual eatery and golf concessionaire, which enhances the park goer experience and exists in harmony with the surrounding neighborhood. BOPC will not support a dance or late-night club, or concert venue operation of any type.
  - II. Operators must provide any updates to the theme, menu, or other suggested alterations from the original plan of operations. Menu pricing must be consistent with comparable prices in the immediate area.
  - III. The BOPC Finance Committee will routinely review all financial aspects, including but not limited to the Operator's annual business plan update. The



Committee will make recommendations and present any concerns or modifications to the Operator.

8. Menu - The Operator, subject to the BOPC's review and approval, shall provide food and beverage items to the public consistent with the menu and pricing prominently displayed, along with accurate publicly posted hours of service operations.
9. Functionality - The Operator must obtain, at its expense, any and all regulated and required permits and authorizations required by the city, County and State consistent with its operations. The Operator shall be required to keep the Premises in a clean, orderly, healthy, and attractive condition at all times. The Operator shall provide prompt courteous service and have sufficient employees available to properly serve the public.
10. BOPC Use of Facility - BOPC is afforded partial use of the Premises for the golf pro shop.
11. Parking & Access - The Operator is only allowed to use the upper parking area next to the building if they have a handicap parking permit. Operator may use driveway as loading zone for loading/unloading purposes. BOPC will have the authority to call City parking enforcement for ticketing if Operator and/or patrons violates the parking or loading zone area.
12. Dates & Hours of Operation - The Operator shall maintain publicly posted business hours of operation for the Premises in conjunction with park hours and City ordinances as follows, noting the Golf Pro Shop closes at sunset.
  - I. Concession Hours: Standard hours of operation will be included and agreed upon in the annual business plan and must be publicly and correctly posted as current with onsite and website notice.
13. Personnel
  - I. The Operator will hire, train, supervise, discipline, and if necessary, dismiss any and all persons necessary to conduct its operations hereunder and will use reasonable efforts to assure that its employees continually practice high standards of cleanliness, safety, courtesy, and service.
  - II. The Operator shall comply with all wage practices and laws of all applicable jurisdictions and shall also comply with all laws governing employment and conditions of employment including without limitation the Workers' Compensation Act of the State of New York and any amendments thereto.
  - III. M/WBE Requirements: This Agreement is subject to the City of Buffalo's Minority/Women Business Enterprises Goals (sometimes herein referred to as "M/WBE Goals"). Operator accordingly shall be contractually obligated to utilize good faith efforts to obtain Minority Business Enterprise (MBE) Project wide participation in the amount of at least twenty-five percent (25%) of the total contract(s) value(s), and Women Business Enterprise (WBE) participation in the amount of at least five percent (5%) of total contract(s) value(s). Operator must make demonstrable good faith efforts consistent with the City of Buffalo Mayor's

Office of Diversity, Equity, and Inclusion's "Good Faith Policy" to achieve the above stated goals, and as a prerequisite to Operator's use of any contractor, such contractor shall complete a form confirming that it will employ the City of Buffalo's good faith policy in achieving the above-stated diversity and inclusion goals. Every January and July, and additionally as the City of Buffalo may request, Operator, shall provide the following to the City of Buffalo: (i.) a listing of all Premises related contracts into which it has entered or which it is about to enter, (ii.) diversity and inclusion data related to each of those contracts, and (iii.) documentation demonstrating Operator's use of good faith efforts in attaining and enforcing diversity and inclusion goals. The City of Buffalo will provide the Operator with informational assistance in meeting the diversity and inclusion goals, including, but not limited to, lists of relevant MBE and WBE contractors, sending email communications via B2GNow software informing MBE and WBE contractors of opportunities available, referring Operator to technical assistance agencies and other agreed-upon methods. The City of Buffalo will monitor goal progress frequently and as the City of Buffalo deems advisable. In addition, all MBE/WBE Goals for the Premises, including but not limited to those for contracts for services, equipment, materials, and or supplies, must be done in conformance with the foregoing goal expectations. To the extent that any MBE/WBE goals and or requirements and or diversity requirements of any project grant funding or other Premises funding source or sources are stricter or different than those required or described above, the stricter rules shall be deemed to apply. It shall be the Operator's responsibility to manage and coordinate and track down all reporting and follow up requirements and documentation assemblage and certifications in connection with all MBE/WBE related and diversity goals.

- IV. Premises Workforce Requirements: Operator shall utilize good faith efforts to attain the following goals regarding Operator's exempt and nonexempt workforce and regarding the workforce of all contractors: (i.) that self-identified minority group members, as defined under NYS Executive Law Article 15 A Section 310, shall work a minimum of twenty-five percent (25%) of total hours available, (ii.) that self-identified females shall work a minimum of five percent (5%) of total weekly hours available, (iii.) that City of Buffalo residents shall work a minimum of thirty percent (30%) of total hours available for contracts over \$250,000 and twenty five percent (25%) for contracts under \$250,000, and (iv.) Pursuant to City Code Chapter 96-13(H)(2), any contractor or subcontractor entering into a construction contract with the City of Buffalo that exceeds \$100,000 shall participate, at the time of bid, in a NYS Department of Labor Registered Apprenticeship Training Program and registered apprentices shall work a minimum of 10 percent (10%) of total hours available. Operator shall cooperate fully with the City of Buffalo to maximize minority participation in its workforce. The City shall have the right, with reasonable notice, to inspect Operator operations, hold discussions with Operator staff leadership, and examine Operator Premises related payroll files for the purpose of confirming compliance with this section.

14. Deliveries - All deliveries of stock items, refreshments and other items used or sold by the Operator shall be made to the least inconvenience of Cazenovia Park operations. BOPC reserves the right to alter any delivery schedule at any time, with prior notice to the Operator, should arrangements need to be made. BOPC is not responsible for attending to, nor assisting with, Operator deliveries, event set up, or other labor requests.
15. Utilities
  - I. The Operator shall be solely responsible for:
    - a. Other utilities such as trash and recycling to be contracted independently based on usage.
    - b. Water, gas, and electricity for 45% of the monthly usage.
    - c. Fire alarm is property and responsibility of the City, including system repairs.
    - d. Security system is managed by BOPC, any additional security will be the responsibility of the Operator.
16. Security & Fire Suppression Plan
  - I. Within 20 days after the Effective Date, the Operator shall furnish a comprehensive security plan to maintain safe and secure operations, especially those parameters for safe alcohol consumption and enforcement, subject to review and approval by BOPC.
  - II. Fire suppression needs and equipment will be reviewed annually and routinely maintained by Operator.
17. Service of Alcoholic Beverages - The Operator may serve alcoholic beverages provided that the Operator obtains the appropriate license and/or licenses from the New York State Liquor Authority (SLA) and operates lawfully under that license. Alcoholic beverages may only be served for consumption on Premises. At this time, the agreement cannot provide for the sale of alcoholic beverages on the golf course (via golf cart), however may be considered if a plan, acceptable to the City and BOPC is created, and if the Operator obtains the appropriate NYS Liquor License to do so.
18. Advertising Restrictions - The Operator shall not advertise or affix signage in any manner other than as approved by BOPC in writing, and the Operator shall have no right to use the trademarks, symbols, or trade name or name of the BOPC or City of Buffalo, directly or indirectly, in connection with any production, promotion, service or publication without prior written approval of the BOPC and City of Buffalo. The foregoing shall not be construed to limit the Operator's right to use the Operator's logos in the ordinary course of its business on its uniforms, menus, cups, and products. All outdoor or public advertising is subject to regulations as per Chapter 133, Article 1 of the City Charter, and approval of the BOPC.

19. Naming Rights - The Operator does not have the right to change the name "Cazenovia Golf Course."
20. Sales - All concession sales must be receipted and/or registered with an independently tested Point-of-Sales (POS) system. The Operator shall be responsible for the furnishing and ongoing maintenance of this system.
21. Promotion of Sales - The Operator shall use all reasonable efforts to enhance, maintain and improve profitability of the Premises and to perform such acts as may be necessary to promote sales, as agreed upon with BOPC in conjunction with sections 2., 8., 18. and 19., of this Agreement.
22. Website - The Operator shall keep an updated website providing basic information and promoting operations.
23. Capital Expenses - Any improvement to the Premises which is assigned a useful life under New York State local finance law and is a bondable expenditure shall be deemed a Capital Improvement. The BOPC will assess capital needs and make a recommendation to the city annually. Capital Improvements shall be the responsibility of the City. Notwithstanding the forgoing, the city is not obligated to make any capital improvements at any time.
24. Modifications and Improvements to Facilities - Any proposed permanent changes to the property or buildings must be approved by the City. In collaboration, the BOPC Design Review Committee is required to review any alterations if proposed, along with any operating concerns for the facility in keeping with the historic context of the site. The Committee will make recommendations and present any concerns or modifications to the city and the Operator. All modifications and improvements will be completed at the sole cost of the Operator unless deemed by the city as capital in nature. The city is not obligated to make any capital improvements at any time.
  - I. The Operator will specify in a proposal any intended modifications/improvements to the property/buildings both in the interior and on the exterior. The specific information shall include a detailed list and itemized budget for both interior and exterior improvements.
  - II. All intended improvement plans must be pre-approved by the City and must be submitted to the BOPC's Design Review Committee prior to any approvals and will require permits to be obtained through the City of Buffalo Permits and Inspections Department.
  - III. The Operator shall not alter, add to, or in any way vary the Premises or make any material alterations or affect any material installations, without having first obtained the consent in writing of City & BOPC. Any and all alterations made as proposed to the Premises will be done at the Operator's expense.
  - IV. If the Operator is proposing changes to the Premises, they shall provide a detailed specific timeline for the start and completion of any proposed Operator

improvements, for approval by the BOPC and City. This timeline should include a firm date for the café to be open and operating.

- V. All improvements, modifications, as well as any permanently installed equipment, permanent furniture, permanent lighting, and fixtures, shall become property of the City upon placement at Premises unless otherwise permitted by the City. A list of Operator property that is non-permanent, and will be removed at conclusion of term, will be provided as part of this Agreement.
- VI. A copy of the key to the facility shall be given to BOPC, if any locks are changed, the new keys must be provided to the BOPC Director of Operations immediately.

25. Maintenance and Repair of Equipment & Structures - The Operator, at its sole expense, shall be responsible for the routine maintenance and ordinary repair of the facility, replacements, renovation of equipment, for all amenities and of-service-ware at the Premises as needed and in accordance with industry standards and codes.

- I. BOPC shall be responsible for the maintenance of the park grounds, clearing and snow removal of all approach paths and access throughout the area, as well as any landscape improvements or redesign. BOPC staff is not responsible for set up, clean up or prep, watering plant material owned by the Operator, or providing/loaning any equipment to the Operator for their operations.

26. Mechanics Lien - The Operator shall protect and keep the improvements and equipment, free and clear of all mechanics and other liens, attachments, encumbrances, or claims arising out of the Operator's operations hereunder, its performance under this agreement, and/or its use of same. In the event any such lien is placed, or any such encumbrance is created, the Operator shall use all reasonable efforts to attempt to have it removed, and if necessary, shall provide a performance bond or other reasonable security. All additional costs incurred not directly related to operations hereunder shall be borne by the Operator.

27. Refuse & Housekeeping - The Operator shall make reasonable efforts to keep the Premises and external areas neat and clean as is consistent with its operation. The Operator shall be responsible for cleanup, bagging and removal of all garbage, refuse, rubbish, and litter from the Premises on a daily basis, in coordination with current BOPC practices.

- I. The operator shall be responsible for all commercial waste and may establish an account with the City for disposal.
- II. Operator is responsible for any clean up after hosted events on premises.
- III. The Operator shall comply with all City, State, and Federal regulations regarding recycling. City of Buffalo recycling totes will be provided. Specifically, used lamps (incandescent light bulbs) that are accumulated for recycling should be stored in packaging that minimizes lamp breakage. Used Lamps may be stored in drums, boxes, or the cartons they originally came in. The packaging must remain closed unless lamps are being added or removed. Any broken lamps must be stored separately in a sealed container. Used lamps must be clearly labeled as "Universal Waste Lamps" or "Used Lamps." The city will remove such waste on a monthly basis.

28. Pest Control – BOPC shall provide regular pest control inspections and extermination as needed for the exterior and interior of the Premises. If additional pest control is needed due to the storage, clean up or presence of food and beverages of Operator, Operator is fully responsible for the cost and expenses for the extermination and any facility repairs resulting.

29. Taxes, Licenses and Permits

- I. The Operator shall pay all license fees, sales taxes on products or services that are provided hereunder, including, but not limited to, all federal, state and local taxes, New York State Worker’s Compensation payments, unemployment insurance, payroll and other taxes with respect to services provided under this agreement and all other taxes arising from the operations hereunder.
- II. The Operator shall obtain and maintain in force during the term of operation, all necessary food, liquor, and other licenses and permits and renewals thereof, and shall pay all fees and taxes which may be due and owing, from time to time, to federal, state, or municipal authorities incidental to its operations. The Operator shall furnish the BOPC with copies of all applicable licenses, permits, and renewals thereof.
- III. The Operator shall advise the BOPC in writing of any pending or threatened actions against the Operator, whether by governmental authorities or otherwise, which seek, or could result in, the suspension or revocation of any license or permit necessary for its performance of this agreement.

30. Compliance with Laws, Policies, Programs and Public Access

- I. In connection with its operations hereunder, the Operator shall comply with all laws and City ordinances (including without limitation fire, building, health, sanitation and environmental codes and regulations, and liquor control laws and regulations, noise regulations, park hours, and any/all City permitting for special events and activities).
- II. As the facility is a public park building, Operator shall comply with allowing public restroom access during business hours of operation.
- III. The BOPC specifically grants to Operator:
  - a. The right to enforce all New York State Laws, rules, regulations, or orders relating to the Premises and the right to enforce all rules, regulations or orders of the New York State Liquor Authority or other regulatory agencies relating to the Premises.
  - b. Full right, power, and authority to take any and all actions necessary to enable and to ensure compliance with all laws, rules, regulations, and orders concerning the sale and consumption of alcohol on the Premises.

31. Violations

- I. In connection with its operations and in compliance with terms above in item 31, Operator consequences of confirmed and recorded violations of any City

Ordinance will activate breach of Agreement if more than three (3) cited violations occur in any one calendar year.

32. Indemnification

- I. The Operator shall be liable and responsible for all damages to persons or property arising in any manner in connection with Operator's operations of the Premises and or caused by or arising out of the actions, obligations, or omissions of the Operator, its employees, agents, representatives, or other persons acting under the Operator's direction or control in connection with the use or occupancy of the Premises.
- II. Further, Operator shall indemnify, defend, and save harmless the BOPC and City of Buffalo and their respective officers, agents, servants and employees from and against any and all claims, demands, suits, proceedings, liabilities, judgments, losses, costs, or damages, including but not limited to attorneys' fees, in any way arising out of, relating to or in connection with the Operator's operations of the Premises and or performance of or failure to perform this Agreement. This provision shall include but not be limited to all losses, costs, and damages that the BOPC and/or City of Buffalo may suffer by reason of injury to the person or property of another resulting in any manner whatsoever from said operations and or from or in connection with the negligence or carelessness, active or passive, of the Operator and or those under the direction and or control of the Operator. Operator shall also defend, indemnify, and hold harmless the BOPC and City of Buffalo, their agents, officers, servants and/or employees against all claims or losses for personal injury resulting in any manner whatsoever from said operations and or from the negligence, active or passive, of employees of Operator or persons working for Operator.
- III. The provisions of this section shall survive the expiration or termination of this Agreement; shall not be limited by reason of any insurance coverage provided hereunder or the limits of any insurance requirements; and shall be separate and independent of any other requirement of this Agreement.

33. Insurance - The Operator shall secure policies of NYS Workers' Compensation and Disability, Professional Liability, General and Automobile Liability Insurance, and maintain said policies in force during the life of this agreement in the limits set forth:

- I. All policies of insurance required by this Agreement shall be provided and maintained at no cost or expense to BOPC and all shall name the BOPC and City of Buffalo as Additional Insured and Certificate Holders with respect to the Operator's activities.
- II. General Liability: With respect to all operations the Operator shall carry Commercial General Liability insurance providing for a minimum limit of one million dollars (\$1,000,000) per occurrence for all damages arising out of bodily injury, personal injury, property damage, products/completed operations, and contractual liability coverage for the indemnification provided under the

agreement. Excess umbrella general liability coverage and automobile liability coverage shall be in at least the amount of three million dollars (\$3,000,000). BOPC and City shall be named as additional insureds and certificate holders under the general liability insurance and under the excess umbrella general liability insurance.

- III. New York State Workers' Compensation & Disability Insurance: Operator shall secure Workers' Compensation Insurance, and keep insured during the life of this Agreement, for the benefit of such employees as are necessary to be insured in compliance with the provisions of the State of New York Workers' Compensation Law. Evidence of workers' compensation shall be demonstrated on the New York form. The Operator shall also provide evidence of Disability Insurance on the New York form. BOPC and City shall be named as certificate holders.
- IV. Automobile Insurance: With respect to any owned, non-owned, or hired vehicles the Operator shall carry Automobile Liability insurance providing for a minimum limit of one million dollars (\$1,000,000) per occurrence for bodily injury and property damage. BOPC and City shall be named as additional insureds and as certificate holders.
- V. Liquor Liability: If liquor shall be served, the liquor liability policy shall be in at least the amount of two million dollars (\$2,000,000).
- VI. All policies of insurance shall be provided by a company, or companies admitted in the State of New York and authorized to do business in the State of New York. Prior to Agreement execution, the Operator shall furnish to the BOPC all certificates of insurance, and shall thereafter provide all renewal certificates, as appropriate, evidencing such coverage written by a company or companies acceptable to BOPC and Corporation Counsel of the City of Buffalo. All certificates of insurance shall be subject to approval by the City's Corporation Counsel. Such certificates and renewal certificates shall provide for a notice of cancellation, change, lapse, or restrictive amendment by certified or registered mail of at least thirty (30) days.
- VII. Any subcontractor performing work under this Agreement shall procure and maintain statutory insurance and other insurance as determined by the Operator so as to properly cover the liability of the Operator and such subcontractor. The policy limits shall be the same as required of the Operator and the certificates of insurance shall be delivered to the Operator. No assignment, subletting, and/or subcontracting in full or in part is permitted without filing the appropriate Access Agreement per the City policy and must receive the written consent of the BOPC and to be issued, denied, or conditioned in the BOPC's sole discretion.

34. No Title Vested- This Agreement is not intended to and shall not vest Operator any title to real estate, permanent fixtures, or property now located or hereinafter located in or around the Café or on the Premises.



35. Force Majeure Event –

- I. If a Force Majeure Event occurs during the Term of this Lease which reasonably precludes Tenant from opening or operating the Permitted Use at the Premises and Tenant in fact ceases such operation in the Premises, then Rent shall abate for the period commencing on the later of (a) the date on which such Force Majeure Event occurs or (b) the date on which Tenant ceases operation of the Permitted Use at the Premises, and ending on the earlier of (c) the date on which such Force Majeure Event concludes or (d) Tenant resumes operating the Permitted Use at the Premises.
- II. BOPC and The City of Buffalo reserves the right, exercisable in BOPC and City's reasonable discretion, to impose reasonable requirements on tenants of the Building, their employees and invitees, for the purpose of reducing the presence of bacteria, viruses, contagions and diseases in the Building, provided, however that in no event shall Landlord's enactment or enforcement of such requirements (or failure to do the same) impose any duty or liability on Landlord or imply any warranty made by Landlord in connection therewith.

36. Breach of Agreement - Any breach of any provision of this Agreement by the Operator, including but not limited to cancellation of insurance, failure to remit fees, fraudulent record-keeping, board of health violations, disregard for city ordinance, and/or unauthorized/inappropriate use of facilities, may result in termination of this agreement. In the event of such breach, after written notice to Operator, and the expiration of a reasonable opportunity to cure not to exceed 60 days, and in the event the Operator fails to cure such breach within such period, the BOPC may at its discretion, immediately terminate this Agreement in its entirety. If the City materially restricts or impairs the Operator's ability to fulfill the terms of this Agreement, Operator may terminate this Agreement with and upon (60) sixty days written notice to BOPC.

37. Competitor Exclusion- BOPC agrees not to rent or enter into agreements for the use of any portion of the Premises with any business which directly competes with Operator's business or activities without express written permission in advance from Operator. Additionally, the allowance of Food Trucks is not permitted on the Premises, unless agreed upon by BOPC and Operator.

38. Intent and further Extension - Intent and language of this Agreement will survive any change in leadership at the BOPC for the term of the Agreement. Any granted extension, if granted, will be dependent on service quality and Agreement term compliance as determined by the City and BOPC. Any change to language terms must be mutually agreed upon. However, should the City or BOPC terminate their 2019-2031 agreement, any and all intentions, extensions or rights of this agreement fall to governance by the City.

39. Entire Agreement- This Agreement constitutes the entire understanding and agreement between the parties with respect to the subject matter hereof, and supersedes any and all prior negotiations or agreements, and may only be modified by a written instrument signed by all parties.

40. Notwithstanding anything in this Agreement which could be construed to the contrary, the Operator shall not have the right to assign and or sublet this Agreement in part and or in full without the prior written consent of both the BOPC and City, which said consent shall be given, withheld or conditioned in the sole respective discretion of both the BOPC and City.

**Signature Page:**

Buffalo Olmsted Parks Conservancy, Inc.

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

Title: \_\_\_\_\_

TBD

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

Title: \_\_\_\_\_

**ATTACHMENT: Ariel View of Building**

