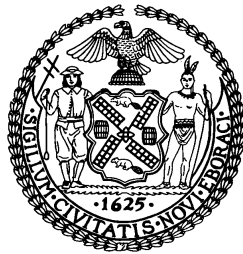


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BRIEFING PAPER OF THE INFRASTRUCTURE DIVISION

Robert Newman, Legislative Director

COMMITTEE ON PARKS AND RECREATION

Hon. Melissa Mark-Viverito, Chairperson

May 2, 2013

Overview of the Randall's Island Park Alliance License Agreement

INTRODUCTION

On May 2, 2013, the Committee on Parks and Recreation, chaired by Council Member Melissa Mark-Viverito, will hold an oversight hearing entitled: “Overview of the Randall’s Island Park Alliance License Agreement.” Representatives from the New York City Department of Parks and Recreation are expected to testify, as well as parks advocates, union members and concerned community groups.

BACKGROUND

The New York City Department of Parks and Recreation (DPR) maintains one of the oldest and largest municipal park systems in the country. DPR maintains about 28,700 acres of parkland, including almost 4,000 facilities that encompass nearly 1,000 playgrounds, 800 athletic fields, 550 tennis courts, 63 swimming pools, 35 recreation centers and 14 miles of beaches. These facilities are visited and used by millions of individuals every year.

HISTORY OF RANDALL’S ISLAND

Randall’s Island is located along the East River between Northern Manhattan and Queens. In 1637, Dutch Governor Wouter Van Twiller purchased Randall's Island, then known as Minnahanonck, from the Native Americans.¹ Over the next 200 years, Randall's Island had various uses, such as, farming, a station for British soldiers, and as a quarantine area for smallpox victims. In 1784, the island was purchased by Jonathan Randel (or Randal), for whom it is named, although with a different spelling. Finally in 1835, his heirs sold it to the City for \$60,000.²

¹See, The New York City Department of Parks and Recreation Website, http://www.nycgovparks.org/related_information/related_information.php?pIDs=M104&MD=DAILY

² Id.

At various times, after purchasing the Island, the City built a burial ground for the poor, a poorhouse, a “House of Refuge” for juvenile delinquents, an “Idiot Asylum,” a homeopathic hospital, an “Inebriate Asylum”, and a rest home for Civil War veterans.³ The location of the Island provided distance between the public and the institutions for the sick and the poor. In 1930 the Metropolitan Conference on Parks recommended that the island remove its institutions and be used solely for recreational purposes.⁴

With the opening the Triborough Bridge in 1936, the public attained easier access to Randall's Island. A local law of 1949 authorized the construction of the 103rd Street footbridge, built by the U.S. Army Corps of Engineers in 1951, which finally accommodated pedestrian traffic from East Harlem. The footbridge leads directly into Ward’s Island Park and provides access to the ballfields, bicycle paths, and waterfront. The footbridge is only open from April through October. Then Parks Commissioner Robert Moses launched an inclusive program to build recreational spaces such as ballfields, playgrounds, and a stadium.⁵ Gradually over the following 30 years, the City filled in the space between Randall's and Wards Islands by using landfill that resulted in an additional 46 acres to the Island allowing for an even greater recreational area.⁶

For many years, the Downing Stadium served as the main attraction of activity on the Island. Completed in 1934, the 22,000-seat stadium held a number of unforgettable sporting events beginning with Jesse Owens' victory in the 100-yard dash at the 1936 Olympic Trials and concerts, such as the New York Pop Festival in 1970 featuring Jimi Hendrix, Grand Funk

³ Id.

⁴ Id.

⁵ Id.

⁶ Id.

Railroad and Steppenwolf.⁷ The stadium was named in memory of former Director of Recreation John J. Downing in 1955. Track and Field returned to Downing Stadium in 1991 with the United States National Track and Field Championships. A number of former and future Olympians and world record holders competed, including Dan O'Brien, Dave Johnson, Leroy Burrell, and Carl Lewis. Pele, the brilliant Brazilian soccer player, made his American soccer debut with the New York Cosmos, a professional soccer team, at Downing Stadium in 1975, and Tiger Woods hosted a golf clinic for City kids in 1996.⁸

Downing Stadium was demolished in 2002 and replaced by Icahn Stadium, a world-class track and field facility. It is the only IAAF-certified stadium in North America which offers a full standard 400-meter Mondo running track flanked by 5,000 covered spectator seats overlooking the East River.⁹ Randall's Island has the largest tennis facility in the city called The Sportime Tennis Center which features 20 tennis courts for training, tennis play and competitions.¹⁰ In addition, the Randall's Island Golf Center is also located on Randall's Island and was recently renovated and includes a tee driving range, two miniature golf courses, batting cages, beer garden and a WiFi lounge.¹¹

Randall's Island attracts 1.7 million visitors per year.¹² Each year, Randall's Island hosts a number of special events including concerts, art fairs and cultural festivals.¹³ The Randall's Island Park Alliance, Inc. "RIPA", in conjunction with City leadership, works to realize the Island's unique potential by developing sports and recreational facilities, restoring its vast natural environment, reclaiming and maintaining parkland, and sponsoring community-linked programs

⁷ Id.

⁸ Id.

⁹ See, Randall's Island Park Alliance, <http://randallsisland.org/about-us>

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

for the children of New York City.¹⁴ RIPA, a non-profit organization created to work on behalf of Randall's Island Park, was formed in 1992, and with DPR maintains and supports the facilities and programs on the Island, such as daytime and afterschool youth athletic programs in tennis, soccer, golf, dance and rugby throughout the year.¹⁵ During the summer, a free six-week summer camp program serves over 1,500 children from 25 community-based organizations from Harlem and the Bronx.¹⁶ In addition, the Wetlands Stewardship programming provides opportunities for over 2,500 NYC public school students to visit, study, and volunteer.¹⁷

Randall's Island License Agreement

Randall's Island (RIPA) is a 501(c)(3) non-profit organization that has a license agreement with DPR to maintain Randall's Island and provide programming within the park. On December 24, 2012 RIPA and DPR renewed their license agreement for an additional 10 year term. The license agreement grants RIPA with the authority to use, occupy, maintain, program and operate Randall's island. The following is a summary of the agreement's provisions:

- RIPA is responsible for obtaining all permits, licenses and approvals as required by the City, State or federal governments which may be necessary to fulfill its obligations under the agreement.
- Failure to fulfill any of the obligations under the agreement may be deemed a breach of the license by the commissioner of DPR. The commissioner may require RIPA to remedy such breach or terminate the license if the breach is not remedied.
- Subject to the approval of the DPR commissioner, RIPA may use and occupy Icahn Stadium on the island as well as the Arsenal West building in Manhattan for office space and equipment storage.
- If DPR gains jurisdiction over additional real property on Randall's Island, such property shall be considered part of the licensed premises. For any buildings that exist on such real

¹⁴ Id.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

property, DPR and RIPA shall mutually agree on the occupancy and use of such buildings.

- The term of the license is 10 years, though the commissioner may renew for an initial 5 year term and a second 5 year term upon 60 days notice. The license is also terminable at will by DPR, provided that DPR provide at least 25 days written notice is given to RIPA.
- No property is leased to RIPA, the City retains title over the island and the licensed premises.
- DPR may assign particular responsibilities to RIPA involving the development, maintenance, operation or programming of the premises, but RIPA must obtain DPR's written approval before entering into any sponsorship or marketing agreement.
- RIPA must periodically inspect the premises for safety hazards and notify DPR of such conditions as well as take reasonable steps to protect the public from harm.
- When RIPA performs maintenance work, it must do so according to the Parks Inspection Program requirements of DPR.
- The positions of park administrator and executive director of RIPA can be held by either: one person serving in dual capacity, or by two people in each position separately. In the event that both position are held by the same person, he/she shall be compensated by DPR for the duties of administrator and by RIPA for the duties of executive director, provided that the compensation agreement is approved by the Conflicts of Interest Board (COIB).
- RIPA may not compensate any employee of DPR without prior consent of the DPR Commissioner and COIB.
- RIPA and DPR shall consult each other regarding the implementation of capital projects and other projects for the improvement of the park and when agreements are entered into with other individuals or entities for such purposes.
- RIPA may fundraise and accept gifts on behalf of the park.
- Before each fiscal year, DPR and RIPA shall agree on what the approved budget for the maintenance and operation for the premises will be.
- RIPA cannot permit or engage in revenue generating activity (including sale of goods or services, or funds raising activities) without prior approval from DPR.
- Subject to the approval of the DPR commissioner, RIPA may provide or allow third parties to provide services at the licensed premises (including horticulture, athletic, maintenance, concerts, events, tours, food, education, parking and transportation) and may derive revenues through fees and other charges.

- RIPA's right to derive revenue is subject to any necessary City approvals, and may not exceed the agreed upon budget with DPR for the operation and maintenance of the licensed premises. If revenues do exceed the approved budget, DPR may suspend operations at the premises, deposit unexpended into an accrual fund, or allow RIPA to use the unexpended funds for additional programming and events, subject to DPR's approval.
- RIPA's by-laws shall allow for certain Mayoral appointments to its board as well as the appointment of the DPR commissioner, Manhattan Borough President and park administrator as ex-officio members.
- The City shall have final authority over any capital projects undertaken at the licensed premises. RIPA has final authority over what capital projects it will choose to spend its own funds on.
- RIPA, at its own expense, may make alterations to the premises upon written approval from DPR. Alterations include restoration, rehabilitation or renovation of the premises, work on the plumbing, heating, electrical or mechanical systems outside of ordinary maintenance, major landscaping and shall become property of the City upon their attachment, installation or affixing. Additionally, no trees may be cut down without DPR's prior approval.
- RIPA, at its own cost, shall provide, replace and maintain all equipment necessary for the operation of the license, unless such equipment is part of a concession contract or other contact with a third party.
- DPR shall pay all utility costs, but RIPA shall pay for cellular phone, cable and internet service during the license's term.
- RIPA shall not create nuisances, cause injury to the premises, danger to public safety, store combustible substances or use the premises for any unlawful purpose.
- RIPA shall maintain commercial general liability insurance (\$3,000,000 per occurrence), workers compensation, employers liability and disability benefits insurance, business automobile liability insurance (\$1,000,000 per accident), and property insurance.
- The City indemnifies and holds harmless RIPA and its employees against all liabilities, damages and expenses arising from all services performed pursuant to the license. However, such indemnification shall not apply to any liability that arises from RIPA's gross negligence or intentional acts of omission.
- RIPA must maintain a separate bank account at a bank located within the City solely for depositing revenue collected under the terms of the license. Such deposits may be withdrawn by RIPA solely for the purposes of ordinary and necessary expenses relating to the operation of the premises pursuant to the license.

- RIPA will make available for audit, inspection or removal by DPR or the New York City Comptroller its documents relating to the performance of the license, including revenue and expenditures, payroll, fringe benefits, staff and salary roster, internal and external audits, minutes of board meetings, registration and attendance records at RIPA's programs or events, research and reports published in connection with RIPA's responsibilities.
- In accordance with general accepted accounting principles, RIPA must establish and maintain accurate records and accounts reflecting all revenue generated and direct and indirect costs associated with the performance of the license. It shall also furnish to DPR a detailed financial statement at the beginning of each fiscal year, which shall include the salaries of all paid staff.
- RIPA will permit access to the premises at all times to the commissioner of DPR and the commissioner's authorized representatives, including parks inspectors, who may conduct unannounced inspections of the premises to ensure compliance with the agreement.
- All personnel employed by RIPA are considered employees of RIPA, not DPR. RIPA alone is responsible for their work, direction, conduct and compensation. No Liability shall be imposed upon DPR or the City to persons or entities employed or engaged by RIPA as consultants, experts, independent contractors or as employees, servants or agents or RIPA.
- RIPA shall not unlawfully discriminate against any employee, applicant for employment or patron based on race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. RIPA shall comply with the Americans with Disabilities Act as applicable.
- RIPA warrants that neither it nor any of its employees shall have any interest that conflicts in any manner with the performance of the license.
- DPR and RIPA shall give each other timely written notice of all press conferences, news events or public ceremonies relating to the performance of the license.
- Any private function on the premises, including the reservation of any part of the premises by third parties, which will result in the closing of any part of the premises to the public during hours of operation, shall be defined as a "special event" and require prior approval from the Commissioner of DPR.
- DPR reserves the right to use the premises for events sponsored by DPR. Such use of the premises must be arranged by DPR in consultation with RIPA and with at least 30 days advance notice to RIPA.
- The license may be modified from time to time by notice in writing by each party. However, no modification shall be effective until it has been agreed to in writing by both parties.

- The license is governed by the laws of New York State and any claims arising under the agreement must be adjudicated in New York.

Recent Issues and Concerns with Events at Randall's Island

One of the more recent events taking place on Randall's Island is the Frieze Art Fair, an international contemporary art fair, which was first initiated in 2012. Frieze is a United Kingdom based arts publication that sponsors and organizes several art fairs in both the United Kingdom and in New York City. During May 10th through May 13th of 2013, the Frieze New York fair will be open to the public on Randall's Island.¹⁸ The fair will include approximately 180 galleries and is designed by New York-based Solid Objectives – Idenburg Liu (SO-IL) architecture firm.¹⁹ To house the fair, a 250,000 square foot temporary tent is being constructed utilizing about 500 workers and 1,400 tractor trailers at a cost of \$1.5 million.²⁰

In November of 2012, Frieze and DPR entered into a Temporary Use Authorization (TUA), which grants permission to use the Harlem River Event Site on Randall's Island for the purposes of the Frieze art fair in 2013. The TUA allows Frieze to conduct a tented art fair with concession tents for food, beverages and merchandise, all subject to the prior written approval of the DPR commissioner or her designee. The following is a summary of the agreement's major provisions:

- The DPR commissioner may terminate the TUA in her sole discretion at any time. Failure to fulfill any of the obligations under the agreement may be deemed a breach and the commissioner may require Frieze to remedy such breach or terminate the license if the breach is not remedied.
- The City and DPR are not liable for any damages to Frieze in the event that the TUA is terminated.

¹⁸ See, Frieze Art Fair, <http://friezenewyork.com/about/>.

¹⁹ Id.

²⁰ Jim Shi, "Frieze Art Fair Makes New York Debut With Custom Campus on Randall's Island," [Bizbash.com](http://bizbash.com), May 8, 2012.

- The term of the permit runs from April 11, 2013 to May, 27, 2013, with the fair occurring from May 10-13.
- Frieze may only operate on days and hours that have been approved in writing by DPR.
- The fee paid by Frieze for the TUA is a nonrefundable \$200,000 payment and an additional \$50,000 restoration site fee. A \$25,000 security deposit is also required, which will be returned to Frieze if they fulfill the obligations of the TUA.
- Frieze will make available for audit, inspection or removal by DPR or the New York City Comptroller its documents relating to the performance of the license.
- Frieze must maintain the licensed premises for the duration of the TUA's term and must cooperate with DPR as to all aspects of operations.
- If Frieze wishes to sell alcoholic beverages, it must obtain the appropriate license from the State Liquor Authority at its own cost and such beverages may only be served and consumed within the licensed premises.
- Frieze must obtain DPR's prior approval before entering into any marketing or sponsorship agreement.
- No temporary storage or other structures and staging areas may be erected without a permit from DPR.
- Frieze must notify DPR of any major accidents occurring within the permitted premises as well as any claim for death, theft, injury or property damage. Frieze must also notify DP of any unusual conditions that may develop during the TUA's term such as fire, flood, casualty or substantial damage of any character.
- The City shall have prior approval of all outdoor artwork displayed at the licensed premises.
- The design and content of all signs are subject to the Commissioner's approval.
- Frieze may not sell, transfer, sublicense or encumber the TUA, unless previously approved by the Commissioner.
- Frieze shall not unlawfully discriminate against any employee, applicant for employment or patron based on race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation.
- Frieze shall indemnify and hold the City, DPR, RIPA and their employees and agents harmless of all liability resulting from damages relating to Frieze's operations under the TUA.

- Frieze must maintain insurance including commercial general liability insurance, workers compensation, employers liability and disability benefits insurance, and property insurance.
- The TUA may be modified from time to time by notice in writing by each party. However, no modification shall be effective until it has been agreed to in writing by both parties.
- The TUA is governed by the laws of New York State and any claims arising under the agreement must be adjudicated in New York.

Since the Fair's conception in 2012, controversy has been generated regarding the workforce used to construct the facility where the event takes place. Various labor unions throughout the City, including the Teamsters, Carpenters and the International Alliance of Theatrical Stage Employees (IATSE) have alleged that Frieze has used non-unionized workers to build event space and move art.²¹ They contend that non-union workers are already on site at Frieze New York's Randall's Island location, and that many of such workers are from out of state. In a press conference on April 17, 2013, union representatives stated that Frieze and their local events coordinator, Production Glue, LLC, are discriminating against New York City's union workers, by paying the non-union workers lower wages.²² Specifically, it was stated that non-union carpenters working around the city earn roughly \$15-16 per hour without benefits, whereas the members with the carpenters union who work on jobs to which the local prevailing wage applies can earn about \$86 an hour, which includes healthcare and other benefits.²³

²¹ Rozalia Jovanovic, "New York Union Members Speak Out at City Hall Against Frieze's Labor Policies," BlounArtInfo.com, April 17, 2013.

See also Allison Bowen, "Union Workers Say Frieze Art Fair Freezing Out Jobs," Metro.us, April 17, 2013.

²² Press Release of the Teamsters Joint Council 16, "ELECTED OFFICIALS AND LABOR LEADERS CALL UPON CITY HALL TO CHANGE PARKS PERMITTING BECAUSE OF ROGUE ART SHOW," April 17, 2013.

²³ Rozalia Jovanovic, "New York Union Members Speak Out at City Hall Against Frieze's Labor Policies," BlounArtInfo.com, April 17, 2013; *See also*, New York City Office of the Comptroller Prevailing Wage Schedule, available at <http://www.comptroller.nyc.gov/bureaus/bl/2012-pdf-files/220Jan2013-Final.pdf>.

Frieze responded to the concerns raised by stating that they are not in a labor dispute with any collective bargaining organization and that they have never had a dispute with any union or any of its employees.²⁴ Frieze also stated that, they have a track record of working with mainly local, vendors with the appropriate skills and experience to prepare Randall’s Island for the upcoming art fair.²⁵ Additionally, they claimed that not directly engaged in the construction industry, but retain contractors as needed to build the fair according to their participating galleries' needs. Our contractors have assured us that they comply with all laws and that they treat their employees fairly.²⁶

Conclusion

This hearing will examine the use of the Randall’s Island Park facilities when it comes to staging privately run events on the island. Specifically, the committee will examine whether concerns regarding the workforce used at these events are well-founded and how they can be addressed by the City.

²⁴ Whitney Kimball, “Unions, City Council, Congresswoman Protest Frieze,” ArtFCity.com, April 19, 2013.

²⁵ *Id.*

²⁶ *Id.*