

## LIST OF REFERENCES – BBG

*FA has an archive containing approximately 4,000 pages, produced in response to FA's FOIL requests. An explanatory spreadsheet is available as well. Contact [info@nyersfreedmission.org](mailto:info@nyersfreedmission.org) to request and explain your reason[s] for accessing the archive.*

### A. Laws pertaining to the structure of the PPP/PEC

1. Chapter 343 of the Laws of New York of 1862.
  - a. Incorporated the Brooklyn Institute [BI], the predecessor entity to the Brooklyn Institute of Arts and Sciences [BIOAS].
2. Chapter 172 of the Laws of the State of New York of 1890.
  - a. Incorporated the Brooklyn Institute of Arts and Sciences [BIOAS].
3. Chapter 509 of the Laws of the State of New York of 1897.
  - a. Incorporated a stand-alone “botanic garden and arboretum,” which was to be built under the auspices of the Brooklyn Botanic Garden [BBG].
4. Chapter 618 of the Laws of the State of New York of 1906.
  - a. Amended Chapter 509 of 1897 and **set out conflicting free access provisions** than that of BIOAS. According to 509, New Yorkers were to access the BIOAS BBG “daily, including Sundays” in contrast to BIOAS providing for free access to “public and private schools” of New York City.
  - b. Yet **none of the City of New York, New York State legislators or BBG/BIOAS stewards of the BBG undertook to codify the conflict.**
5. Chapter 178 of the Laws of the State of New York of 1911.
  - a. Amended Chapter 509 of 1897 as to other provisions than free access.
  - b. **Again, the City of New York, New York State legislators and BBG/BIOAS stewards could have undertaken to codify the conflicting free access provisions, but they did not.**
6. Chapter 87 of the Laws of the State of New York of 1934.
  - a. Amended Ch. 172 of 1890 to broaden the purpose of BIOAS to include “musical and other performances,” which resulted in the adoption of the Brooklyn Academy of Music as a department of BIOAS.

### B. Evidence showing that BBG and Brooklyn Academy of Music [BAM] disassociated from BIOAS while still benefitting from BIOAS economic advantages

7. Regarding BAM, see Introductory paragraph in [BAM's Current and Past Leadership](#).
8. BAM and BBG are not “active,” “assumed names” of BIOAS [see New York State [Division of Corporations](#)].

**C. New York City documents the PPP/PEC structure**

9. “[Procedures Manual](#).” Department of Cultural Affairs. 2005.
  - a. Describes the prerequisites PPP/PEC institutions and other New York City institutions must meet to qualify for City funding [see C.10 and C.11 of [LIST OF REFERENCES -- PPP](#)].

**D. BBG documents pertaining to the PPP/PEC structure**

10. [Brooklyn Botanic Garden Record, Volume 1, Number 1, January 1912](#).
  - a. Provides the terms of the Agreement between the City of New York and The Brooklyn Institute of Arts and Sciences concerning the Brooklyn Botanic Garden was reported in [pages 7-16](#) and at **pp. 12**.
  - b. In addition to the terms of open and free access, the Agreement dissuaded any ambiguity regarding BBG’s obligation to the schools and “residents of the City of New York” in exchange for City funds, when it provided as follows:
    - i. **“Use of Buildings. FOURTH: -- That upon the completion of any plant house or plant houses, or rooms for instruction in botany ... acting through its Board of Park Commissioners, the Brooklyn Institute of Arts and Sciences shall enter into possession of said plant house or houses, and rooms for instruction, and shall use the same in connection with, or as a part of said botanic garden and arboretum for the care and culture of tender or other plants, indigenous or exotic, and for the giving of instruction in botany to the residents of the City of New York, in accordance with the provisions of Section 2 of Chapter 618 of the Laws of 1906.”** [[Chapter 618 of the Laws of 1906](#) refers to *Bot. Gard. Record* I: 7-16. Ja. 1912 at footnote on p. 10, which is this Agreement between the City of New York and BIOAS/BBG)].
  - c. Further, the Agreement unequivocally outlined BBG’s obligation to provide materials **in the public schools** of New York City – **not only in the buildings within the BBG land area** and to the extent that **any fees were received, that these proceeds are recycled** into the BBG’s “library, apparatus and equipment” **for use by teachers in the public schools** [not only in buildings within the BBG land area] **or at the BBG’s discretion to “other educational institutions within said City”**:

- i. **“Public Exhibits: Material for Public Schools. EIGHTH: -- That the party of the second part [the BIOAS/BBG] is hereby expressly authorized to exhibit photographs, charts, apparatus or publications relating to botany, in this city or elsewhere, in the public schools or otherwise, for educational or scientific purposes, provided, however, that **all the net proceeds**, if any, of such exhibitions shall be **devoted solely to the benefit or increase of the library, the apparatus and equipment of the botanic garden and arboretum**, and said party of the second part shall, so far as any surplus resources will permit, furnish plants or botanic material **for use in the teaching of botany in the public schools of The City of New York**, and in case the supply of plants or materials for instruction is not exhausted by the demand of the public schools of the City, such plant and botanic materials may, at the discretion of the party of the second part **be furnished to other educational institutions within said City.**”**
- d. Additionally, the City doubled-down on the BBG's obligation to be City-education and City-resident centric when the Agreement stated as follows:
  - i. **“Free Admission to Grounds and Buildings. NINTH. – It is mutually agreed that said botanic garden and arboretum shall be open and accessible to the public without any charge or gratuity on a portion at least, of every day of the year, under such rules and regulations as the party of the second part [BIOAS/BBG] may from time to time prescribe; **but it is expressly understood and agreed** that the party of the second part shall have the **privilege of closing the plant houses or rooms for instruction to the public until 2 o'clock in the afternoon on two days in the week for the purpose of scientific research and for the cleaning or re-arranging of collections or apparatus in said plant houses and rooms of instruction. Admission to said houses and rooms of instruction during such closed hours shall be regulated** by the party of the second part, but all professors and teachers in the *public and private schools or other institutions of learning in New York City*, and pupils accompanied by said teachers, shall be admitted on such closed days, subject to the rules and regulations of the party of the second part; **but in no case shall there be any charge for the use of the plant houses or rooms for instruction or for the use of the library, collections, plants or apparatus contained therein.**”**

11. [\*Brooklyn Botanic Garden Record, Volume 1, Issue 3, July 1912.\*](#)

- a. pp. 76: [Chapter 509 of the Laws of the State of New York of 1897](#) incorporates a botanic garden and arboretum in Brooklyn. Chapter 509 **provides the gardens/arboretum's purpose and lays out the garden geography.**
  - i. [Chapter 509 of the Laws of the State of New York of 1897](#) was amended by [Chapter 618 of the Laws of the State of New York of 1906](#).
- b. pp. 77: Chapter 618 of the Laws of the State of New York of 1906, amends Chapter 509 of the Laws of the State of New York of 1897, which incorporates the Brooklyn Botanic Garden.
  - i. Chapter 618 of the Laws of the State of New York of 1906, provides for the public to have **free access daily, including Sundays**, subject only to the needs of proper care, culture, and preservation of the garden.
- c. pp. 80: [Chapter 178 of the Laws of the State of New York of 1911](#), amends [Chapter 509 of the Laws of the State of New York of 1897](#), which incorporates the Brooklyn Botanic Garden.
  - i. Chapter 178 provides for free admission similarly to Chapter 618 - - i.e., " ... open and **free to the public daily, including Sundays**, subject to such restrictions only as to hours as the proper care, culture and preservation of the said garden may require..."

12. **Joint letter from the BIOAS and BBG dated July 15, 1974 [in FA archive].**

- a. Confirms that the BBG **"is one of the departments of the [BIOAS]:**
  - i. Neither objects to the incorporation of the "Brooklyn Botanic Garden Corporation" or to the use of "Brooklyn Botanic Garden" in its name.

E. **One of the 17 PPP/PEC institutions prepares and disseminates in 1917, a report chronicling the ways in which these City-funded institutions were meeting their PPP obligation.**

13. [Guide to the Nature Treasures of New York City](#). American Museum of Natural History. 1917.

- a. American Museum of Natural History [AMNH] is the integral character in this institutional accounting though it includes descriptions of the New York Aquarium, Zoological Park, and Botanical Garden, as well as the Brooklyn Museum, Botanic Garden, and Children's Museum.
- b. **While focused on these institutions in 1917, FA identifies this tome as a representative model for New York City's oversight agency, the Department of Cultural Affairs [DCA], to use to provide evidence to City leaders and New Yorkers that all 17 of the PPP/PEC institutions are meeting the terms of controlling laws, complying contracts and DCA prerequisites to qualify for City funding.**

- c. Illustrating this possibility, [FA annotated this guide to show how the publication of a document similar to this tome would translate well for annual publication on the DCA's and each PPP/PEC institution's website.](#)

**F. Examples of New York City's failure to comply with the PPP**

14. Despite unrepealed New York State laws, the DCA and other City agencies entered into Amended Lease and/or new or Amended License Agreements with each of the PEC institutions, in contravention of New York State law in some instances and/or the DCA prerequisite to price tickets to "encourage attendance by a broad segment of the population of the City of New York" [see [PUBLIC-PRIVATE PARTNERSHIP](#) including F. 21. a-m In [LIST OF REFERENCES – PPP, PEC INSTITUTIONS](#) and DCA's "[Procedures Manual](#)"]. These Agreements were produced in response to FA's FOIL requests. New Yorkers subsidize PPP/PEC institutions with more than **\$1 BILLION annually** in direct and indirect subsidies [see [FINANCIAL ANALYSIS](#)].
15. For years, New York Botanical Garden [NYBG] has been **actively campaigning to repeal** the admission provisions of [Chapter 285 of the Laws of 1891 as amended by Chapter 465 of the Laws of 1994](#) **by removing State authority** over NYBG's admission provisions. Former Governor Andrew Cuomo's June 2, 2020 [VETO MESSAGE - No. 148](#) **quashed NYBG's efforts** as spelled out in [NY State Senate Bill S4449](#). **In the wake of Cuomo's VETO**, State Senator Alessandra Biaggi and Assemblywoman Nathalia Fernandez introduced [Senate Bill S8038](#) and [Assembly Bill A8562](#), **respectively, in an effort to contravene Cuomo's VETO.**

**Knowing the justification behind Cuomo's VETO cries out for dissemination to New Yorkers, the Adams' Administration, members of the City Council and State Legislators, because it makes even more appalling NYBG's end-run to evade Cuomo's VETO by proposing new legislation.**

Former Governor **Cuomo's VETO asserted as follows:**

**"Given the unique conditions on which the [NYBG] was established, particularly the premise that the park should be free and open to the public and a more than 100 year track record of limiting the [NYBG's] authority to charge a fee, it is prudent to veto this bill until the Legislature can provide a finding that the authority to charge a fee in perpetuity is necessary to make the [NYBG] fiscally sound. The current bill lacks any meaningful analysis and therefore provides insufficient grounds to overturn the long-standing preference to keep this public park free and open to the public. Also, concerning is the lack of analysis to whether the [NYBG] has made the grounds free for primary and secondary schools, as is required by the law. Until it can be demonstrated that the NYBG has met its current obligation, it would be unsound to remove the free policy from state oversight." [emphasis added]**

In July 2022, Governor Hochul signed [Senate Bill S8038](#) and [Assembly Bill A8562](#). Read the JUSTIFICATION section in the Bill to learn the reasoning for Hochul's approval while recognizing that **the Bill is devoid of the facts** of the history of "free access" and instruction as being "consideration" NYBG and the other PPP/PEC institutions is to

provide to New Yorkers in exchange for New Yorkers providing NYBG and the other PPP/PEC institutions **\$1 BILLION** in annual “consideration” in the form of free rent, and capital and operating costs. In 2017 and 2018, New Yorkers' consideration to NYBG amounted to **\$73.3 MILLION** and **\$87.3 MILLION**, respectively. In addition, **because of free rent, NYBG amassed** an investment and endowment portfolio **\$640.4 MILLION** in 2017 to **\$678.8 MILLION** in 2018. S8303 takes effect in 2025. It should be repealed and free admission provisions for **all** New Yorkers should revert back to [Chapter 285 of the Laws of 1891](#).

- **New Yorkers must act now to STOP elected politicians from parlaying our free rights for votes.** [see [SIGN FA'S PETITION NOW!](#)]

16. New York City's Department of Parks [DPR] owns New York City's four zoos; namely, the Bronx Zoo [BZ], Central Park Zoo [CPZ], Prospect Park Zoo [PPZ] and Queens [Flushing Meadows Park] Zoo [QZ] and the New York Aquarium [NYA]. However, the BZ and NYA are overseen by New York City's Department of Cultural Affairs [DCA]. DPR contracts with the New York Zoological Society [NYZS], doing business as the Wildlife Conservation Society [WCS] to manage and operate PPZ, CPZ and QZ [see HISTORY OF NYZS-WCS.] **New York State law provides for New Yorkers' free admission to each of the NYZS-WCS venues three days in a week.** Yet the **Commissioner of the DPR**, an appointed official by an elected official, **authorizes the charging of admission fees in each venue in violation of New York State law and to the economic and cultural harm of New Yorkers.** [see [PEC INSTITUTIONS](#)]

17. [HISTORY OF BIOAS](#)

- a. Informing overview of the incorporation of, and the integration of departments into and out of, the Brooklyn Institute of Arts and Sciences [BIOAS].

18. [PUBLIC-PRIVATE PARTNERSHIP](#)

- a. Informing overview of the origins and purpose of the PPP and the history of its successes and weaknesses.

G. **City demonstrates that New Yorkers are on our own if we want to challenge the City's and PEC institutions' compliance with New York State and local laws or terms of superseded contracts.**

19. "[Brief Amicus Curiae](#) for the City of New York." 2014. Supreme Court of New York. Appellate Division: First Department. *Saska et al vs. The Metropolitan Museum of Art* consolidated with *Grunewald/Nicholson vs. The Metropolitan Museum of Art*. Corporation Counsel of the City of New York.

- a. An Amicus Brief is filed when one is not a party to the litigation but wants to support one of the parties, known as a “friend of the court” filing. **Corporation Counsel wrote in favor of The Metropolitan Museum of Art.**
- b. FA's Founder was a party to the non-class portion of this consolidated action.
- c. **Corporation Counsel in effect demonstrates that if a New Yorker attempts to bring legal action against a PPP/PEC institution, the City will advocate on behalf**

**of the institution and not the residents and taxpayers of New York City.**

**H. Popular press**

20. Dena Kleiman. [“Behind Inflated Attendance Figures.”](#) *The New York Times*. 2/21/1987.
  - a. [Reveals that](#) four of the 17 PPP/PEC institutions, namely, the Bronx Zoo, the New York Botanical Garden, the American Museum of Natural History and The Metropolitan Museum of Art, with the last overestimating attendance by 42%, counted visitors “[t]wice”. In the case of The Metropolitan Museum and Natural History, their figures would plummet from 7,000,000 and 5,000,000 to 3,500,000 and 2,500,000, respectively and their cost per visitor would double. Similarly, the Bronx Zoo and the New York Botanical Garden would fall from 1,820,766 to 910, 383 and from 1,300,000 to 650,000, respectively.
  
21. Sarah Bahr reported in *The New York Times*. [“Brooklyn Museum to Receive \\$50 Million Gift From City of New York: The funding will be the largest capital investment in the museum’s nearly 200-year history.”](#) 11/22/2021.
  
22. [Grace Glueck. “Metropolitan Museum to Institute Admission Charge”.](#) *The New York Times*. 10/09/1970.
  - a. Covers the initiation of a pay-what-you-wish-but-you-must-pay-something admission fee for all visitors, including New Yorkers, which opened the floodgates for the other PPP/PEC institutions to do similarly.
  
23. [American Museum Asking Admission, But Visitor Sets It.](#) *The New York Times*. 4/25/1971.
  
24. [“The Metropolitan Museum of Art’s statement on new 2013 lease.”](#) Website. Metropolitan Museum of Art. 10/24/2013.
  - a. MMA’s official statement on the amendment to its 1878 lease with the City of New York, authorizing the museum to consider a range of admission modifications in future years, subject as in the past to review and approval by the City.
  - b. Article reveals that The Metropolitan Museum had been untruthful in reporting to the New York City courts that a 1970 agreement with the City authorized The Met to operate using a pay-what-you-wish-but-you-must-pay-something admissions policy yet the 1878 Lease was not amended.
  
25. [Randy Kennedy. “New York City Amends Fee Policy for a Visit to the Met.”](#) *The New York Times*. 10/24/2013.
  - a. Article reports on an Amendment to The Metropolitan Museum’s, the American Museum of Natural History’s and the Museum of the City of New York’s Leases, during the Bloomberg administration, where the Mayor, in effect provided these institutions the right to “make an

admission fee mandatory,” despite no evidence that the Office of Corporation Counsel had read, interpreted, and opined on the provisions of state and local laws, among other things or codified them for enforcement by oversight agencies.

- b. Article reveals that The Metropolitan Museum had been untruthful in reporting to the New York City courts that a 1970 agreement with the City authorized The Met to operate using a pay-what-you-wish-but-you-must-pay-something admissions policy yet the 1878 Lease was not amended.

26. Regarding the Kennedy article above,

- a. Consider a [Settlement](#) reached in a consolidated court case against The Metropolitan Museum of Art regarding its admission policy [see Justice Kornreich's 6/6/17 Decision and Order].
- b. Then, consider [Why We Are Opposing The Proposed Metropolitan Museum Settlement](#), by Michael Hiller, principal, Hiller PC. A negation of the Settlement reported by counsel for FA Founder Pat Nicholson, party to the non-class action portion of this consolidated action.
- c. In addition, consider a New York City Corporation Counsel [Amicus Brief](#) filed in 2014 as part of this litigation and in support of The Metropolitan Museum of Art [see fuller description above.]

**I. Financial information.**

27. [Consolidated Financial Statements](#). 2017-2018.

- a. Offers an overview of BBGC's financial condition for the years ending June 30, 2017 and 2018.

28. [2018 IRS Form 990](#). 2017-2018.

- a. Details BBGC's finances for the fiscal years ending June 30, 2017 and 2018.

29. [Schedule O of its 12/31/2018 IRS 990 filing](#). 2017-2018.

- a. BBGC acknowledges that it was “founded 108 years ago [1910]” and in effect affirms that its admission policy should comply with [Chapter 178 of the Laws of the State of New York of 1911](#) – i.e., “open and free to the public daily, including Sundays...”