

**CULTURAL CENTER CONCESSION LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF CULTURAL AFFAIRS AND  
SPECIAL EVENTS)**

**AND**

---

[NAME OF LICENSEE]

**BRANDON JOHNSON  
MAYOR**

**ERIN HARKEY  
COMMISSIONER**

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Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God ("force majeure event"). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a force majeure event must notify the other party within 20 days after the occurrence of the force majeure event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than 60 days due to a force majeure event, without the express written consent of the Commissioner.	
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## **CHICAGO CULTURAL CENTER CONCESSION LICENSE AGREEMENT**

This Chicago Cultural Center Concession License Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 201\_ by and between \_\_\_\_\_ [legal name of entity] a(n) \_\_\_\_\_ [type of entity and state of organization] doing business as \_\_\_\_\_ [dba name, if different from legal name of entity] (“**Licensee**”), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois (“**City**”), acting through its Chicago Department of Cultural Affairs and Special Events (“**DCASE**” or “**Department**”).

### **BACKGROUND**

The City owns the Chicago Cultural Center, and the Commissioner of DCASE of has the authority to enter into contracts with entities to operate retail shops in facilities managed by DCASE, including the Chicago Cultural Center, for terms of up to two (2) years with a maximum extension of two (2) years. The City has determined that it is in the best interest of the City to enter into a concession agreement for retail concessions within the Cultural Center and to allow the concessionaire to make capital improvements to certain spaces, thereby better serving Cultural Center patrons by providing a shop selling handmade artwork and decorative items produced by Chicago artists .

Pursuant to this desire, the City issued a Request for Proposals (“RFP”) for a retail concessionaire to operate in the Chicago Cultural Center, and Licensee responded with a proposal to operate a concession. The City desires to grant Licensee, and Licensee desires to accept, a license to operate such a concession at the Cultural Center location(s) identified in this Agreement, all under the terms and conditions of this Agreement.

NOW, THEREFORE, the City and Licensee agree as follows:

### **ARTICLE 1 CITY APPROVAL**

If the initial term of this Agreement exceeds 24 months or the term including extensions exceeds 48 months, then the Agreement is subject to approval by the City Council of the City of Chicago. In such a case, the City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Commissioner of DCASE or any representative authorized in writing to act on the Commissioner’s behalf. As provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner or the Commissioner’s authorized representative. As provided in Section 11.3, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Commissioner or his proxy. As further provided in Section 11.3, any substantial amendment of the terms of this Agreement will require approval by the City Council, if Council approval was required for authority to enter into this Agreement at its inception.

## **ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS**

### 2.1 Incorporation of Background.

The Background set forth above is incorporated by reference as if fully set forth here.

### 2.2 Incorporation of Exhibits.

The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Space(s)
Exhibit 2	Term Sheet
Exhibit 3	Site Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Contractor's Performance and Payment Bond
Exhibit 6	Insurance Requirements and Evidence of Insurance
Exhibit 7	MBE/WBE Special Conditions, Related Forms, and Compliance Plan
Exhibit 8	Economic Disclosure Statement
Exhibit 9	Sexual Harassment Policy Affidavit (Section 2-92-612)
Exhibit 10	Cultural Center Concession Artwork Standards

## **ARTICLE 3 DEFINITIONS**

### 3.1 Interpretation and Conventions.

A. The term "**include**," in all of its forms, means "include, without limitation," unless the context clearly states otherwise.

B. The term "**person**" includes firms, associations, partnerships, trusts, corporations and other legal entities, including public bodies, as well as natural persons.

C. Any headings preceding the text of the articles and sections of this Agreement, and any table of contents or marginal notes appended to copies of this Agreement are solely for convenience of reference and do not constitute a part of this Agreement, nor do they affect its meaning, construction or effect.

D. Words in the singular include the plural and vice versa. Words of the masculine, feminine or neuter gender include correlative words of the other genders. Wherever an article, section, subsection, paragraph, sentence, exhibit, appendix, or attachment is referred to, the reference is to this Agreement, unless the context clearly indicates otherwise.

E. Where the approval or consent of Licensee is required under this Agreement, it means the approval or consent of the Licensee's authorized representative. To be binding on the City, all approvals or consents must be in writing and signed by the appropriate City representative.

F. Whenever time for completion or performance is listed as "days", if the number of days is 30 or more, it means calendar days, and if the number of days is less than 30, it means business days per the City of Chicago calendar.

### 3.2 Definitions

In addition to terms defined elsewhere in this Agreement, the following words and phrases, when capitalized, have the following meanings:

**"Additional Space"** means Concession Space or Storage Space that is added to Licensed Space after the Effective Date pursuant to Section 5.1. Additional Space, if any, that is offered to Licensee is solely at the discretion of the Commissioner. Licensee has absolutely no right or entitlement to be offered any Additional Space, and the concept of Additional Space is solely for the benefit of the City to address vacancies in the Cultural Center Concession program.

**"Affiliate"**, except where otherwise defined, means any individual, corporation, partnership, trustee, administrator, executor or other legal entity that directly or indirectly owns or controls, or is directly or indirectly owned or controlled by, or is under common ownership or control with Licensee.

**"Back of the House Area(s)"** means an area or areas designated by the Commissioner that are not accessible to the public to be used in common by licensees for deliveries or temporary storage of goods or refuse.

**"Chief Procurement Officer"** means the head of the Department of Procurement Services of the City and any City officer or employee authorized to act on her behalf.

**"Commissioner"** means the head of the Department and any City officer or employee authorized to act on his behalf. City contractors and consultants have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where expressly authorized to do so herein.

**"Common Areas"** means those areas of the Cultural Center that are not licensed, or otherwise designated or made available by the Department for use by specific party or parties.

**"Comptroller"** means the head of the Department of Finance of the City and any City officer or employee authorized to act on his behalf.

**"Concession"** means Licensee's business of offering the Products identified in Exhibit 4 for sale at retail to the public at the Cultural Center pursuant to this Agreement.

**"Concession Space"** means a Licensed Space used by Licensee for the sale at retail of Products, including any Additional Space used for that purpose.

**"Cultural Center"** means the Chicago Cultural Center, located at 78 E. West Washington St.

**"Cultural Center Concession Artwork Standards"** means the standards attached to this Agreement as Exhibit 10, as may be amended by the Commissioner from time to time.

**"Date of Beneficial Occupancy"** or **"DBO"** means, as to the Concession Space, the date Licensee commences retail sales in the Concession Space.

**"Default Rate"** means 10% per annum.

**"Delivery Date"** means the date upon which the City gives Licensee access to the Concession Space or Storage Space in question.

**"Department"** means the Chicago Department of Fleet and Facility Management, also known as 2FM.

**"Development Plan"** means, as further described in Section 5.4, the Licensee's conceptual plans, budget and other design specifications for construction of its Improvements and its schedule for commencement of retail sales in each Concession Space. The Development Plan is attached hereto as Exhibit 3.

**"Effective Date"** means the date on which the Commissioner executes this Agreement and notifies Licensee of award of the Agreement.

**"Environmental Laws"** means collectively, all applicable federal, state and local environmental, safety or health laws and ordinances and rules or applicable common law, including the Occupational Safety and Health Act of 1970, as amended (29 U.S.C. §651 et seq.), the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.), the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §5101 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et seq.), the Toxic Substances Control Act of 1976, as amended (15 U.S.C. §2601 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Clean Water Act (33 U.S.C. §1251 et seq.), the Safe Drinking Water Act (42 U.S.C. §300(f) et seq.) as any of the foregoing may later be amended from time to time; any rule or regulation pursuant to them, and any other present or future law, ordinance, rule, regulation, permit or permit condition, order or directive addressing environmental, health or safety issues of or by the federal government, or any state or other political subdivision of it, or any agency, court or body of the federal government, or any state or other political subdivision of it, exercising executive, legislative, judicial, regulatory or administrative functions.

**"Event of Default"** has the meaning set forth in Article 9.

**"Fees"** means all amounts payable by Licensee in connection with this Agreement, including but not limited to Fixed Fees, Percentage Fees, any liquidated damages specified in the Agreement for non-compliance with the City's requirements for Concession operations.

**"Fixed Fee"** means the amount payable by Licensee for use of the Licensed Space as set forth in Exhibit 2.

**"Gross Revenues"** means the total amount in dollars, attributable to a License Year, of the actual sales price of all receipts, whether for cash or on credit, that are derived from business conducted in, on or from the Licensed Space, all orders received or



filled at or from the Licensed Space, all deposits not refunded to purchasers, all orders taken in and from the Licensed Space whether or not the orders are filled elsewhere, and receipts or sales by Licensee and any other person or persons doing business in or from the Licensed Space, including receipts from promotions, advertising, and income derived or any other use of the Licensed Space by Licensee. Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;
- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made in or from the Licensed Space and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Space to any other stores or warehouses of Licensee;
- D. sales of Licensee's fixtures and store equipment not in the ordinary course of Licensee's business;
- E. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- F. insurance proceeds received from the settlement of claims for loss of or damages to Improvements, Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

A **"sale"** is deemed to have been consummated for purposes of this Agreement, and the entire amount of the sales price must be included in Gross Revenues, at the time that: (i) the transaction is initially reflected in the books or records of Licensee; or (ii) Licensee receives all or any portion of the sales price; or (iii) the applicable goods or services are delivered to the customer, whichever occurs first.

**"Imposition"** means permit fees, license fees, and any other fee or charge not specified in this Agreement but otherwise payable by Licensee pursuant to a statute, ordinance, or regulation in order for Licensee to operate the Concession at the Cultural Center.

**"Improvements"** means the improvements to be made to the Licensed Space by Licensee, including fixtures and trade fixtures (but excluding trademarked or proprietary trade fixtures) and any other enhancements of a permanent or temporary nature made to the Licensed Space, so that the Licensed Space can be used for Concession operations. The Improvements must be described, along with a budget of Improvement Costs, and depicted conceptually in the Development Plan and must conform to Licensee's response to the RFP.

**"Improvement Completion Date"** means the date by which all Improvements must be completed in accordance with the terms of this Agreement, as set forth in the Development Plan.

**"Improvement Costs"** means the total amount paid by Licensee for categories of

labor, services, materials and supplies used in the design, development, installation and construction of the Improvements.

**"Licensed Space"** means the total Concession Space and Storage Space licensed to Licensee under this Agreement, identified in Exhibit 1, which may be amended from time to time as space may be added to or deleted from during the Term in accordance with the provisions of this Agreement. Licensed Space shall be used for operation of the Concession and for no other purpose unless otherwise approved in writing by the Commissioner.

**"License Year"** means

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy of the Concession Space and ending on [insert month, date] of the following calendar year, and
- B. for the balance of the Term, a period beginning on [insert month, date] and ending on [insert month, date] of the following calendar year, but including only that portion of the License Year prior to the date on which the Term expires or the Agreement is otherwise terminated.

**"License"** means the privilege granted to Licensee under this Agreement to operate the Concession at the Cultural Center in the Licensed Space.

**"Percentage Fee"** means the product of the Percentage Rate set forth in Exhibit 2 multiplied by Gross Revenues in any License Year, including the Initial License Year.

**"Products"** means the merchandise that Licensee is permitted to sell in its Concession Space and maintain in inventory in its Storage Space under the terms of this Agreement, as set forth by category or item in Exhibit 4, subject to obtaining all applicable licenses. As set forth in Article 4, Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4, increase the prices of any items or types of items identified in Exhibit 4, or conduct any other business from the Licensed Space unless otherwise agreed in writing by the Commissioner or expressly permitted by this Agreement.

**"Storage Space"** means a Licensed Space used by Licensee for storage of Products inventory to support a Concession Space. No Products may be sold to the public from Storage Space.

**"Subcontractor"** means all entities providing services and materials to Licensee necessary for its Concession operations or for the construction, repair, and maintenance of the Licensed Space and Improvements. The term "Subcontractor" also includes subconsultants of any tier, subcontractors of any tier, suppliers and materialmen, whether or not in privity with Licensee.

**"Subcontracts"** means all oral or written agreements with Subcontractors.

**"Term"** means the period of time beginning on the Effective Date and ending at 11:59 p.m. The Term may be extended up to an additional two (2) years (two possible one (1) year extensions) at the Commissioner's sole option.

"Work" means everything necessary for the design, engineering, construction and installation of the Improvements; when referring to restoration of Improvements after Major Damage, it means everything necessary for the replacement, repair, rebuilding, or restoration of the Improvements.

#### **ARTICLE 4 LICENSE AND LICENSEE'S OPERATIONS**

##### 4.1 License.

A. Effective as of the Effective Date, the City, in consideration of the payment of the Fees, hereby grants the non-exclusive privilege to the Licensee to operate a Concession at the Cultural Center from the Licensed Space subject to the terms contained in this Agreement. The Licensee is not a tenant. This Agreement creates a temporary license only. The Licensee acknowledges and agrees that the Licensee shall not hold or claim at any time an interest or estate of any kind whatsoever in the Licensed Space by virtue of this Agreement or by virtue of the Licensee's use of the Licensed Space. In addition, the City reserves the right to provide programming events in the Cultural Center common areas under existing City programs, including but not limited to programming or events managed by the Department of Cultural Affairs. The execution of this Agreement does not give the Licensee any other right with respect to the Licensed Space. Any rights not expressly granted to the Licensee through this Agreement are reserved exclusively to City. Unless otherwise specified in this Agreement, execution of this Agreement does not obligate the City to undertake any additional duties or services.

B. Licensee accepts the License from the City and assumes the duties of Licensee provided in this Agreement. The license granted hereunder will terminate upon the expiration or earlier termination of this Agreement. If Licensee complies with the terms of this Agreement, Licensee will have the right of ingress to and egress from the Licensed Space, for Licensee, its officers, employees, agents, Subcontractors, vendors, suppliers, and invitees, subject, however, to all statutes, ordinances, rules and regulations from time to time enacted or established by the City or any other governmental agency or authority having jurisdiction.

C. Licensee must not conduct its Concession operations in a manner that, in the judgment of the Commissioner:

(i) interferes or might interfere with the reasonable use by others of Common Areas or Licensed Space of other Licensees;

(ii) hinders or might hinder Cultural Center security, police, fire-fighting or other emergency personnel in the discharge of their duties;

(iii) would, or would be likely to, constitute a hazardous condition on the Cultural Center;

(iv) would, or would be likely to, increase the premiums for insurance policies maintained by the City, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations; or

(v) would involve any illegal purposes.

4.2 No Sublicenses, Assignments or Other Uses.

Licensee understands and agrees that the Licensed Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is to provide Licensee a License to operate its Concession, without right of sublicense or assignment, from the Licensed Space and that any attempted sublicense, assignment or other use of the Licensed Space without the written consent of the City in accordance with the terms of this Agreement is absolutely prohibited and is an Event of Default. Any reference to “sublicensee” in this Agreement must not be interpreted to allow sublicensing of any rights under this Agreement without the written consent of the Commissioner.

4.3 General Requirements for Operation of Concessions.

Licensee has the authority to manage and administer the Concession in the Licensed Space, subject to the rights of the City under the law, in equity, and under this Agreement to direct Licensee in order to ensure that the Cultural Center operates in the most effective and efficient way possible and to supervise the Licensee’s performance. Licensee covenants to take all commercially reasonable measures to maintain, develop, facilitate and increase the business of the Concession so as to maximize Gross Revenues. Licensee further covenants that neither it nor any Affiliate of Licensee will divert or cause or allow to be diverted any business from the Licensed Space to other locations not at the Cultural Center that are operated by Licensee or any Affiliate of Licensee. A material condition of this Agreement is that Licensee must operate the Concession operations in accordance with the Cultural Center Concession Artwork Standards, and the following general requirements:

A. Unless otherwise approved by the Commissioner in writing, Licensee must conduct business in its Licensed Space only in the Licensee’s trade name identified in its response to the RFP.

B. Unless authorized in writing by the Commissioner, Licensee must not install or operate any coin, card, token or otherwise activated vending machines or devices of any kind or type.

C. Licensee must conduct its Concession operations in a first-class, businesslike, efficient, courteous, and accommodating manner. The Commissioner has the right to make reasonable objections to the appearance and condition of the Licensed Space if they do not comply with these standards. Licensee must discontinue or remedy any non-compliant practice, appearance or condition within five days following receipt of a written notice by the Commissioner (or immediately upon receipt of such a notice if the Commissioner deems non-compliance hazardous or illegal). Licensee’s failure to timely cure the non-compliance as required by the Commissioner would cause the City damages including, among other things, loss of goodwill, that would be difficult or impossible to prove or quantify. Accordingly, if Licensee fails to timely cure non-compliance, then, in

addition to all other remedies the City may have at law, in equity or under this Agreement, and beginning on the first day after expiry of the five-day cure period, Licensee must pay the City, as liquidated damages in connection with the loss of good will among visitors to the Cultural Center, and not as a penalty, the amount of \$100 for each non-compliant practice, appearance or condition specified in the notice that remains uncured after the cure period.

D. Licensee must neither commit nor allow any nuisance, noise or waste in the Licensed Space or annoy, disturb or be offensive to others in the Cultural Center. Licensee must employ all reasonable means to prevent or eliminate unusual, nauseating or objectionable smoke, gases, vapors or odors from emanating from the Licensed Space. Licensee must employ all reasonable means to eliminate vibrations and to maintain the lowest possible sound level in the operation of the Concession.

E. Licensee must at all times accept as suitable payment for any sale of Products any of at least three nationally recognized credit cards, such as but not limited to American Express, Visa, MasterCard and Discover.

F. Licensee shall at all times during the Term of this Agreement be compliant with the Payment Card Industry (“PCI”) Data Security Standard to the extent applicable to the Services and shall be responsible for the security of the payment cardholder data in its possession. Licensee shall provide City such information as the City may reasonably require regarding Licensee’s compliance with such PCI requirements, including, at a minimum, an annual certificate of compliance by Licensee with the PCI Data Security Standard. In the event of Licensee’s non-compliance with the PCI Data Security Standard and/or in the event of a data breach, Licensee must inform the City immediately, and, at Licensee’s expense, must take all curative measures necessary to remedy such non-compliance or data breach.

G. Licensee must not place or install any racks, stands, or trade fixtures directly on or over the boundaries of its Licensed Space. Licensee must not use any space outside the Licensed Space for sale, storage or any other undertaking, other than in connection with deliveries made in a prompt, timely and efficient manner.

H. In its capacity as Licensee under this Agreement, and not as an agent of the City, Licensee must manage the Concession operations and the Licensed Space in accordance with this Agreement, in furtherance of which Licensee must, among other things:

- (i) use reasonable efforts to remedy problems and issues raised by Cultural Center patrons with respect to the operation of the Licensed Space;
- (ii) answer in writing all written customer complaints within 72 hours after receipt, furnishing a copy of the complaint and the answer to the Commissioner within that period; and,
- (iii) furnish the Commissioner within 72 hours after their receipt copies of all written notices received by Licensee from any governmental authority or any Subcontractor with respect to any part of the Licensed Space or any Subcontract.

If Licensee fails to timely respond to customer correspondence or governmental notices

and furnish the requisite copies to the Commissioner, Licensee acknowledges that the City may suffer loss of goodwill and other harm the value of which is difficult to determine, and thus, in addition to any remedies for the Event of Default, the Commissioner will assess as liquidated damages against Licensee, and not as a penalty: (A) an amount of \$100 per day for each day after the initial 72 hours until Licensee responds to the customer complaint or governmental notice and (B) if Licensee fails to provide the requisite copies to the Commissioner, \$100 per day until the Licensee provides the Commissioner with the copies. Licensee's failure to perform either (A) or (B) for a period of 30 days or more will be grounds for the City declaring an Event of Default pursuant to Article IX, in which event Licensee will have no longer than 10 days to cure the Event of Default.

#### 4.4 Hours of Operation.

A. Licensee must begin conducting its Concession operations in the Licensed Space(s) on the Date of Beneficial Occupancy applicable to that Licensed Space and continue them as outlined in Exhibit 2 (Term Sheet) which may be modified and approved by the Commissioner in writing.

B. Except as otherwise permitted under this Agreement, if Licensee fails to operate its Concession from the Licensed Space during all times that Licensee is required to do so under this Agreement and the failure continues for more than three days after the City gives Licensee notice, it is an Event of Default. In addition, Licensee acknowledges that failure to provide Concession services to the public would cause the City substantial damages, a portion of which may be ascertainable but another portion of which, related to loss of goodwill due to the public's inability to obtain the Products, the provision of which is one of the key purposes of this Agreement, might be difficult or impossible to prove or quantify. Accordingly, in addition to other remedies available to the City for an Event of Default, Licensee must pay the City as liquidated damages (and not as a penalty) in connection with such loss of goodwill the amount of \$100 per day, beginning as of the time that the City first notifies Licensee that it is not operating the Concession in accordance with the time requirements of this Agreement. The obligation to make payments of liquidated damages will continue until the earliest of: (i) the time that the Concession Space re-opens for business; (ii) the date that this Agreement expires or is terminated; and (iii) the date that the Commissioner orders Licensee to vacate the Licensed Space.

#### 4.5 Personnel.

##### A. Staff.

(i) Licensee must maintain a full time, fully trained staff during the Term of this Agreement having sufficient size, expertise and experience to operate the Concession. Licensee must maintain an adequate sales force so as to maximize Gross Revenues and use the utmost skill and diligence in the conduct of its Concession operations.

(ii) Licensee will assume full responsibility for the actions of all personnel and shall be solely responsible for their supervision, daily direction and control,

remuneration, severance pay and claims, withholding taxes, insurance, social security licenses, and all other actions related to the Contractor's Concession operations. All Licensee personnel will be deemed to be employees of Licensee and will not for any purpose considered employees of the City.

(iii) Licensee shall comply with all applicable laws concerning the hiring and employment of personnel, including the Federal and State of Illinois Equal Employment Opportunity Regulations, and applicable prevailing wage rate statutes.

(iv) Licensee shall perform background checks on all employees, including criminal background checks, a check against the national sex offender database, fingerprinting, and such other checks as may be required by applicable law. All personnel records, reports, and background checks will be made available to the City within 10 days of request.

(v) All employees of Licensee must at all times be clean, courteous, neat in appearance and helpful to the public, whether or not on duty. Licensee's employees are required to wear uniforms in good taste, the color and style of which Licensee selects. Licensee may make the arrangements with its own employees as it considers appropriate regarding the purchase and maintenance of standard uniforms. The City is entitled at any time to direct Licensee to require any of its employees not properly attired to immediately conform to the requirements of this Section or leave the Licensed Space.

(vi) Licensee and its personnel must at all times participate and cooperate fully in all quality assurance programs that may be instituted by the Commissioner from time to time. Licensee must cause its personnel to attend all customer service training meetings and participate in such other programs as may be required by the Commissioner. An appropriate officer or management representative of Licensee must meet with the Commissioner as requested by the Commissioner to discuss matters relating to this Agreement, including merchandising and marketing plans. In addition, at the request of the Commissioner, an appropriate officer or management representative of Licensee must attend other meetings with the City or any other parties designated by the Commissioner.

B. General Manager. Licensee must designate a General Manager experienced in management and supervision who has sufficient authority and responsibility to administer and manage the Concession. The General Manager (or authorized representative) must be immediately available to the Department whenever the Licensed Space(s) is/are open. The General Manager must spend substantially all of his or her working hours at the Cultural Center, unless the Commissioner approves in writing another arrangement. The General Manager is subject to removal at the direction of the Commissioner if the Commissioner reasonably determines, in her sole discretion, that the General Manager is not performing up to standards consistent with the fulfillment of Licensee's obligations.

C. Salaries. Salaries of all employees of Licensee and its Subcontractors performing services or Work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act"

of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering Work under this Agreement to insure compliance of all Subcontractors with those regulations and with the other requirements of this subsection, and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, the requirements of them.

#### 4.6 Operation and Maintenance.

A. The City, at its sole cost and expense, will keep in good repair the Common Areas of the Cultural Center. The Commissioner reserves the right to interrupt temporarily the heating, air cooling, ventilation, plumbing or electrical services furnished to the Common Areas, to make emergency repairs or for other reasonable purposes, and the Commissioner will restore the services as soon as reasonably possible. The City has no responsibility or liability for failure to supply heat, air cooling, ventilation, plumbing, electrical or any other service to the Licensed Space, or the Cultural Center as a result of the making of repairs or replacements, fire or other casualty, strikes, failure of the utility provider to provide service or due to any other matter not within the City's reasonable control.

B. (i) Licensee must provide all utilities cleaning and janitorial services, which are not identified in Exhibit 2 as being provided to the Licensed Space. Licensee must clean, maintain and repair (including replacements, where necessary) the Licensed Space and Improvements in first-class condition and repair during the entire Term.

(ii) Licensee is responsible for pest control within the Licensed Space by contracting with a professional pest control service to provide service on a regular basis or as needed, or at the Commissioner's election, the City may provide or contract for the pest control and charge Licensee a reasonable charge for the service. If the Commissioner so requires, Licensee must coordinate all pest control service with the City's pest control contractor. Licensee must furnish the Commissioner a copy of its pest control contract and service records upon request.

(iii) If applicable, Licensee must, at its own expense, keep the kitchen waste and exhaust system, including the grease trap and all risers, piping and fans used in connection with the waste and exhaust systems, whether located in or outside of the Licensed Space, and all other pipes or ducts used by Licensee, including black iron duct, in good repair and so as to meet the highest standards of cleanliness, health, and safety, in a manner consistent with the operation of a first-class restaurant and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction. Licensee must clean grease pans on a regular basis. Licensee must properly maintain the grease trap to prevent any overflow or discharge of grease. The grease trap and all plumbing pipes must be rodded and cleaned regularly and as often as necessary to prevent clogging or discharge. Licensee must not permit any grease to be discharged into the City's plumbing lines. If fixtures or equipment are installed in or attached to roof vents or other openings in the structure or to ducts that connect with the openings, Licensee must keep the ducts, vents and openings free from the accumulation of grease, dirt and other exhaust matter and must furnish and service any filters or other



equipment necessary to prevent such accumulation. Licensee must keep the exhaust fan in good condition and repair so as to provide at least the air flow velocities required by applicable codes and regulations. Without limiting the foregoing, Licensee must clean black iron duct twice yearly, or more often as may be required by any local governmental codes, regulations or officials, insurance requirements or applicable industry standards, whichever is more restrictive.

- (iv) Licensee must maintain all fire detection and fire suppression systems and mechanisms, if required by Building Code, in accordance with all applicable laws, codes and the requirements of all applicable policies of insurance and insurance inspectors and of the City. Licensee must not cause or permit any damage to insulation and fire protection materials surrounding the black iron duct. In addition to Licensee's obligation to maintain utility lines in the Licensed Space as set forth in Section 4.8 below, Licensee must install and maintain in good working order and in accordance with the rules and regulations of all insurers and applicable laws, codes, and regulations of any governmental authority, all fire extinguishing systems in the Licensed Space.
- (v) Upon request, Licensee must provide the Commissioner with monthly repair and maintenance reports detailing all repair and maintenance undertaken with respect to its Licensed Space. In the event that such repair and maintenance reports indicate that Licensee is not complying with its repair and maintenance obligations, it shall be an Event of Default. In addition to any other remedies available to the City, if Licensee fails to undertake required repair or maintenance within 5 days after receiving notice from the Commissioner (or such shorter time as may be required due to health or safety reasons) the City may undertake the required repair or maintenance through a City contractor or its own forces and charge Licensee the reasonable cost thereof.
- (vi) To the extent any City ordinance imposes a stricter standard than the requirements of this section, the stricter standard must govern.
- (vii) Any damage to property of the Cultural Center or property of other Licensees arising out of Licensee's failure to perform its maintenance obligations is expressly deemed a "Loss" subject to Licensee's indemnification obligations under Section 8.2.

C. Common Areas.

Licensee shall not use common areas, including areas adjacent to the Concession facilities, for any purpose other than ingress and egress, and any such use thereof shall be subject to the terms of their Concession License Agreement. Without limiting the generality of the foregoing, Licensee shall not use the common areas to canvass, solicit business or information from, or distribute any article or material to, other Licensees, users, patrons, or visitors to Cultural Center property. Licensees shall not allow anything to remain in any passageway, sidewalk, court, path, roadway, corridor, patio, entrance, exit, or other area outside of the Licensed Space, unless approved by the Commissioner in writing.

The City will be responsible for the operation, repair and maintenance of the Common Area.

In addition, the City reserves the right to provide programming events in the Cultural Center common areas under existing City programs, including but not limited to programming or events managed by the Department of Cultural Affairs. The execution of this Agreement does not give the Licensee any other right with respect to the Licensed Space. Any rights not expressly granted to the Licensee through this Agreement are reserved exclusively to City. Unless otherwise specified in this Agreement, execution of this Agreement does not obligate the City to undertake any additional duties or services.

#### 4.7 Utilities.

A. Licensee must pay for all utilities furnished to the Licensed Space, to the extent separately metered. All utilities must be separately metered for usage within a Licensed Space except to the extent that the Commissioner agrees otherwise in writing. Notwithstanding the foregoing, in the event that water/sewage is not separately metered, the City may charge Licensee for water/sewage based on a reasonable estimate of usage given the nature of the Concession.

B. In addition to payment for utility service, Licensee must maintain utility lines to the Licensed Space as follows:

- (i) where the utility lines, including gas, electrical, telephone, hot and cold water, fire sprinkler, gas, and sewer serve both the Licensed Space and other areas of the Cultural Center, Licensee is only obligated to maintain those branch lines and facilities that exclusively serve the Licensed Space; and
- (ii) where such utility lines are entirely for the exclusive service of the Licensed Space, Licensee is obligated to maintain the utility lines from the Licensed Space up to the main entry point of the utility to the Cultural Center. Alternatively, the City may, at the Commissioner's sole discretion, maintain such utility lines and charge Licensee the reasonable cost of the maintenance.
- (iii) Licensee must maintain all electrical cables, conduits, wiring, fire alarm systems, electrical panels and associated equipment located within and serving the Licensed Space.

#### 4.8 Refuse Handling.

A. Licensee, at its own cost and expense, must provide for the handling of all refuse, including trash, garbage, recycling and other waste created by its Concession operations and for their disposal at the Back of the House Areas within the Cultural Center designated by the Commissioner from time to time. Within its Licensed Space, Licensee must provide a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage, recycling and other refuse resulting from its Concession operations. Licensee must provide and use suitable covered metal receptacles for all trash, garbage, recycling and other refuse in accessible locations within

the boundaries of each Licensed Space. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Licensed Space or the Common Areas is forbidden. The Commissioner reserves the right, from time to time, to establish time periods or schedules during which Licensee must remove refuse from the Licensed Space.

B. Licensee must comply with all present and future laws, orders and regulations and any rules and regulations promulgated by the Commissioner regarding the separation, sorting and recycling of garbage, refuse and trash. Licensee must separate and appropriately dispose of recyclable and non-recyclable waste, including organic materials. Recyclable waste includes newspaper, unsoiled paper products, cardboard, plastic, aluminum and glass. Licensee is encouraged to use service goods made from recycled and recyclable materials. All recyclable waste will be disposed at the direction of DCASE. DCASE may also require sorting and disposal of compostable/organic wastes, including food scraps and soiled paper products. Licensees must therefore also provide for the separation of pre-consumer compostable\organic waste for composting.

C. Transporting of garbage and recycling to the designated Back of the House Areas must be done in a gondola that prevents dripping in the common area.

#### 4.9 Promotion.

A. Signs and Advertising. Licensee may, at its own expense and subject to obtaining any necessary permits, install and operate necessary and appropriate identification signs in and on the Concession Space for its promotional use (identifying the Concession operations at the Concession Space in question or the Products sold there). All such signage (especially all signage visible from the Common Areas) must be in compliance with signage and other applicable criteria adopted by the Commissioner or other City agencies from time to time and subject to the prior written approval of the Commissioner as to the number, size, height, location and design (as applicable). Licensee must not install, affix, or display any signage outside the Concession Space except as permitted by the Department. Without the prior written consent of the Commissioner, Licensee and its Subcontractors must not distribute any advertising, promotional or informational pamphlets, circulars, brochures or similar materials anywhere within the Cultural Center except within the Licensed Space and except as are related to Licensee's Concession.

#### 4.10 Distribution and Storage; Deliveries.

Licensee acknowledges that the City will not be responsible for and will have no liability related to the operation of (or the failure to operate) the Back of the House Areas or comparable storage facility, including lost profits, consequential damages or any other losses or damages whatsoever.

#### 4.11 Certain Rights Reserved By the City.

A. Except as expressly provided otherwise in this Agreement: the City has the rights set forth below, each of which the City may exercise with notice to Licensee and without liability to Licensee for damage or injury to property, person or business on

account of exercising them; the City's exercise of any such rights is not deemed to constitute a breach of this Agreement or a disturbance of Licensee's use the Licensed Space; the City's exercise does not give rise to any claim, including for set-off or abatement of Fees; the City's exercise also does not relieve Licensee of any obligation to pay all Fees when due. The rights include the rights to:

- (i) Install, affix and maintain any and all signs throughout the Cultural Center;
- (ii) Decorate or to make repairs, inspections, alterations, additions, or improvements, whether structural or otherwise, in and about the Cultural Center and for such purposes to enter upon the Licensed Space, and during the continuance of any of the work, to temporarily close doors, entryways, and public space in the Cultural Center, and to interrupt or temporarily suspend services, all without affecting any of Licensee's obligations under this Agreement, so long as the Licensed Space is reasonably accessible and usable;
- (iii) Keys to the Licensed Spaces, including master keys and passkeys, to all doors within and into the Licensed Spaces will at all times be kept under adequate and appropriate security by the Department. Licensee must not change any locks, nor affix locks on doors. Notwithstanding the provisions for the Department's access to the Licensed Spaces, Licensee releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault. Upon the expiration or termination of the Term of this Agreement, Licensee must return all keys to the Commissioner and must disclose the combination of any safes, cabinets or vaults left in the Licensed Space;
- (iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Licensed Space and to require all such items and furniture and similar items to be moved into or out of the Cultural Center and the Licensed Space only at the times and in the manner as the Commissioner directs in writing. Licensee must not install or operate machinery or any mechanical devices of a nature not directly related to Licensee's ordinary use of the Licensed Space without the prior written consent of the Commissioner. Movements of Licensee property into or out of the Cultural Center or the Licensed Space and within the Cultural Center are entirely at the risk and responsibility of Licensee, and the Commissioner reserves the right to require permits before allowing any property to be moved into or out of the Cultural Center or the Licensed Space;
- (v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Cultural Center and the Licensed Space;
- (vi) Show the Licensed Space to prospective Licensees at reasonable times and, if vacated or abandoned, prepare the Licensed Space for re-licensing;

- (viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Licensed Spaces at reasonable locations;
- (ix) Enter the Licensed Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the Cultural Center Concession Artwork Standards and exercise any rights granted to City or retained by City in this Agreement; except in the case of emergency, however, the right must be exercised upon reasonable prior notice to Licensee and with an opportunity for Licensee to have an employee or agent present;
- (x) Grant to any person the right to conduct any business or render any service in or to the Cultural Center; and
- (xi) Promulgate from time to time rules and regulations regarding the operations at the Cultural Center.

B. Licensee will be solely responsible for installation and maintenance of all sprinkler systems, whether or not Licensee was required to install such sprinkler systems. If any sprinkler work requires a temporary shut-down and/or drainage of the sprinkler system or portion thereof in the Cultural Center, Licensee must pay an up-front fee of \$500 per occurrence in the form of a certified check or money order.

## **ARTICLE 5 LICENSED SPACE AND IMPROVEMENTS**

### 5.1 Licensed Space.

As provided in Section 4.1, the City grants Licensee the right to use the Licensed Space identified in Exhibit 1, from the Date of Delivery of the Licensed Space through the remainder of the Term of this Agreement for the operation of the Concession, except as otherwise provided for herein. Exhibit 1 may be amended by agreement of the Licensee and the Commissioner from time to time to reflect changes in Licensed Space, including but not limited to any Additional Space. Licensee must confine all of its Concession operations to its Licensed Space. Any conduct of Concession operations outside of Licensee's Licensed Space without Commissioner's written approval, is an Event of Default.

A. Concession Space. The Licensed Space includes the Concession Space identified in Exhibit 1. Concession Space is to be used for the sale of Products at retail to the public.

B. Storage Space. The Licensed Space includes the Storage Space, if any, identified in Exhibit 1. Storage Space is to be used to store inventory and supplies for use in the Concession Space. It may be used for other purposes relating to the Concession with the consent of the Commissioner, but not as a point of retail sale of Products. If the Commissioner determines that Licensee is using Storage Space for purposes unrelated to the Concession, the Commissioner may unilaterally delete the Storage Space from the Licensed Space. If the Commissioner determines that the size of the Storage Space

exceeds the needs of the Licensee, the Commissioner may unilaterally reduce the size of the Storage Space.

C. Additional Space.

- (i) During the Term, the Commissioner may from time to time, at his sole discretion, make Additional Space available for Licensee's Concession operations. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:
  - a. size and location of the Additional Space being offered, if any;
  - b. whether the Additional Space is being offered as Concession Space or Storage Space;
  - c. Licensee's Improvement obligations for the Additional Space; and
  - d. the additional Fixed Fee for the Additional Space.

Within 30 days after receiving the notice from the Commissioner, Licensee must notify the Commissioner if it accepts or rejects the Additional Space and, if the Additional Space is Concession Space, and the proposed Improvements. Upon notification from Licensee to the Commissioner that Licensee accepts the Additional Space and, if the Additional Space is Concession Space, acceptance by the Commissioner of the proposed Improvements, the square footage will be added to the Concession Space or Storage Space, as applicable, under this Agreement and Exhibits 1 and 2 modified accordingly. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the Commissioner within 30 days that it accepts the Additional Space, the offer will terminate and the Commissioner may offer the Additional Space to others.

- (ii) Nothing in (i) above requires the Commissioner to offer any Additional Space to Licensee or limits or restricts the Commissioner's or the City's right to enter into any Concession agreement with any third party for such space. **Additional Space, if any, offered to Licensee is solely for the benefit of the City or Cultural Center to enhance Cultural Center revenues, and whether or not to offer such Additional Space to Licensee is at the Commissioner's sole discretion. LICENSEE HAS NO RIGHT TO BE OFFERED ANY ADDITIONAL SPACE.**

5.2 Title to Property in the Licensed Space.

Licensee shall retain title and ownership to all Products and other Licensee personal property and proprietary trade fixtures in the Licensed Space (collectively furniture, fixtures, and equipment or "FF&E") and Improvements, except in the event of deemed abandonment, as determined in the sole discretion of the Commissioner after termination or expiration of this Agreement. FF&E shall include:

- (a) Display cases, counters, tables, chairs, rugs and any other retail sales

- furnishings;
- (b) Temporary partitions or space dividers;
- (c) Displays, shelving, clothing racks, décor, temporary lighting and signage;
- (d) All inventory and point of sale equipment;
- (e) Internet, phone, cable and Wi-Fi access;
- (f) PCs and other office equipment and supplies;

The City owns all other property in the Licensed Space.

### 5.3 Licensee's Improvement Obligations.

A. Concession Space and Storage Space. Unless otherwise agreed in writing by the Commissioner, Licensee must complete, or cause to be completed, the Improvements as described in the Development Plan. Improvements shall be at Licensee's sole cost and expense and must be completed in accordance with the schedule set forth in the Development Plan, subject to Section 11.19, "Force Majeure."

### 5.4 Work Requirements.

A. TIME IS OF THE ESSENCE IN THE PERFORMANCE OF WORK UNDER THIS AGREEMENT.

B. Compliance with Standards. Licensee must comply in its design, construction, use, occupancy and operation of the Licensed Space, at its own cost, with: all federal, State of Illinois, and City laws, rules, regulations and ordinances, including all building, zoning and health codes and all Environmental Laws. The Improvements:

- (i) Must conform with all architectural, fire, safety, zoning and electrical codes and all federal, State, City and other local laws, regulations and ordinances pertaining to them, including the ADA, and all Cultural Center standards, procedures and regulations.
- (ii) Must be free and clear of any mechanics' or materialmen's liens or similar liens or encumbrances.
- (iii) Except as otherwise provided in this Agreement, must be completed entirely at Licensee's cost and expense and in accordance with the requirements of this Agreement.

Licensee must provide for any supplemental heating, cooling and exhaust facilities that Licensee may require to properly heat, cool, ventilate and exhaust air in the Licensed Space. All such supplemental facilities must be designed and installed in accordance with applicable building codes, and must be approved by the Commissioner prior to installation. If at any time the Licensee's supplemental heating, cooling and exhaust facilities fail to comply with applicable building codes, Licensee must, on notice from the City, cause repairs to be made so that Licensee is in compliance with this requirement.

C. Development Plan. Licensee's Development Plan, as approved by the Commissioner, is attached hereto as Exhibit 3. It describes and depicts the Licensee's

thematic concept for the Concession Space (including storefront design images, as appropriate), floor plan(s) and dimensions of the Concession Space, surrounding landscaping Improvements (if any), a detailed description of the nature and scope of Improvements with dimensions, its implementation plan and detailed schedule for implementing the Improvements and commencing Concession operations in the Licensed Space, description of any temporary facilities that may be necessary to meet the requirements of this Agreement, materials to be used for the Improvements, and such other things as the Commissioner reasonably requests. The Development Plan must include the anticipated Date of Beneficial Occupancy of each Concession Space, the budgeted Improvement Costs for each Concession Space, and the Delivery Date necessary in order to achieve the anticipated DBO for each Concession Space.

D. Inspection of Improvements in Progress. The Department has the right to enter upon the Licensed Space for the purposes of inspecting and recording the Improvements in progress, ensuring that Licensee's construction complies with the Development Plan, and rejecting any such construction that does not so conform.

E. Mechanic's Liens. Licensee must not permit any mechanic's lien for labor or materials furnished or alleged to have been furnished to it to attach to any portion of the Licensed Space or the Cultural Center. Upon making payments to Subcontractors, Licensee must obtain from each Subcontractor a waiver of mechanic's liens against any portion of the Licensed Space or the Cultural Center arising out of any Work done by the Subcontractor and each and every of the Subcontractor's materialmen and workmen. If, nonetheless, any such mechanic's lien is filed upon any portion of the Licensed Space, or the Cultural Center, Licensee must indemnify, protect, defend and save harmless the City against any loss, liability or expense whatsoever by reason of the mechanic's lien and must promptly and diligently proceed with or defend, at its own expense, the action or proceedings as may be necessary to remove the lien. Licensee must deliver notice to the Commissioner of any such lien or claim within 15 days after Licensee has knowledge of it. Licensee may permit the mechanic's lien to remain undischarged and unsatisfied during the period of the contest and appeal; provided that, upon request by the Commissioner, Licensee must post a bond with the City equal to 150% of the amount of the lien. If the lien is stayed and the stay later expires or if by nonpayment of any lien any portion of the Licensed Space or the Cultural Center will be, or is claimed to be, subject to loss or forfeiture, then Licensee must immediately pay and cause to be satisfied and discharged the lien. If Licensee fails to do so, the Commissioner may, in his or her sole discretion, draw on the bond and make such payment and, in such event, the amount paid shall immediately be payable by Licensee to the City. Failure to post a bond when requested by the Commissioner or make the payment due shall be an Event of Default.

#### 5.5 Damage or Destruction of Improvements.

A. Insubstantial Damage. If Improvements to the Licensed Space are damaged, in whole or in part, by fire or other casualty, and there is no Major Damage (as defined below) to the portion of the Cultural Center infrastructure served by the damaged Improvements, Licensee must repair the damage to the Improvements as soon as reasonably possible at Licensee's expense.

B. Major Damage.



- (i) **"Major Damage"** means any damage or destruction that, based on reasonable estimates made by the Department within 60 days after the occurrence of the damage or destruction, in order to be repaired to the condition existing before the damage or destruction
  - a. would cost, with respect to the Improvements, in excess of 50% of the replacement cost value of all Improvements to the Licensed Space; and
  - b. would, with respect to Cultural Center infrastructure, require, in the sole judgment of the Commissioner, more than six months to complete.
- (ii) If any portion of the Cultural Center infrastructure suffers Major Damage, whether or not including any portion of the Licensed Space, in whole or in part by fire or other casualty, the Commissioner has the right, for a period of six months starting on the date of the occurrence, to elect not to repair the Major Damage as otherwise required under this section, by giving written notice of the election to all licensees. If the Licensed Space is not affected by the Major Damage, Licensee may be required to continue Concession operations and pay Fees, in the sole discretion of the Commissioner. If the Licensed Space is rendered unusable for Concession operations, then Licensee must cease Concession operations and will not be required to pay Fees after the date of the occurrence of Major Damage but must pay all Fees otherwise owing prior to the date of occurrence. If the Commissioner elects not to repair the Major Damage, the Commissioner has the right to terminate, in the Commissioner's sole discretion, any or all license agreements, whether or not affected by the Major Damage, and relevant licensees must vacate the relevant licensed spaces.
- (iii) If any portion of the Licensed Space suffers Major Damage, and if after the occurrence of the damage the Agreement is not terminated at the sole discretion of the Commissioner, the Licensee will, in accordance with paragraph B(v) below, estimate the cost of restoration and the length of time that will be required to repair the damage and will notify City of the estimate, which estimate must be approved by the Commissioner. If the damage can be repaired and the Improvements restored before the Term expires, then Licensee must repair the damage and restore the Improvements. If repair and restoration cannot be substantially completed before the Term expires, then this Agreement terminates as of the date of the Major Damage.
- (iv) If this Agreement is not terminated in accordance with paragraphs (B)(ii) or (iii) and a casualty has damaged or destroyed any portion of the Cultural Center infrastructure involving the Licensed Space, the City will restore the Cultural Center infrastructure to the condition existing on the Delivery Date as nearly as possible, in the Commissioner's sole determination. Upon completion of the City's Cultural Center

infrastructure restoration work, if any, Licensee must proceed to rebuild the Improvements as nearly as possible to the character of Improvements existing immediately before the occurrence.

- (v) Before beginning to replace, repair, rebuild or restore Improvements, Licensee must deliver to the Commissioner a report of an independent consultant acceptable to the Commissioner setting forth:
  - a. an estimate of the total cost of the Work;
  - b. the estimated date upon which the Work will be substantially completed; and
  - c. a statement to the effect that insurance proceeds are projected to be sufficient to pay the costs of the Work.
- (vi) The Commissioner will use commercially reasonable efforts to provide suitable temporary space during the period of restoration subject to the reasonable approval of Licensee. Licensee must relocate the Concession operations to the temporary space, and the costs associated with any such relocation, including moving expenses and the cost of reconstructing the Improvements in the temporary space, must be borne by Licensee.

C. Insufficient Insurance. In no event will the City be obligated to repair, alter, replace, restore, or rebuild any Improvements, or any portion of them, nor to pay any of the costs or expenses for them. If Licensee's available insurance proceeds are not sufficient to cover the cost of the restoration as required under this Section, then Licensee is liable to complete the repairs at its own cost and expense, except as provided in (C) above.

#### 5.6 City Resident Construction Worker Employment Requirement.

A. Use of Residents. In connection with and during the construction of any Work in excess of \$100,000 in Improvement Costs, Licensee and its Subcontractors must comply with the provisions of § 2-92-330 of the Municipal Code of the City of Chicago ("**Municipal Code**"), as amended from time to time concerning the minimum percentage of total construction worker hours performed by actual residents of the City. (At least 50% of the total construction worker hours worked by persons on the site of the Work must be performed by actual residents of the City. Licensee may request a reduction or waiver of this minimum percentage level of Chicagoans in accordance with standards and procedures developed by the Chief Procurement Officer of the City.) In addition to complying with this percentage, Licensee and its Subcontractors are required to make good faith efforts to utilize qualified residents of the City in both unskilled and skilled labor positions. "**City Resident**" means persons domiciled within the City. The domicile is an individual's one and only true, fixed and permanent home and principal establishment. Licensee and each Subcontractor (for purposes of this subsection, "**Employer**") must provide for the maintenance of adequate employee residency records to ensure that City Residents are employed. Each Employer will maintain copies of personal documents supportive of every employee's actual record of residence.

B. Certified Payroll Reports. Weekly certified payroll reports (U.S. Department of Labor Form WH-347 or equivalent) must be submitted by hard copy or electronically to the Commissioner and must identify clearly the actual residence of every employee on each submitted certified payroll. The first time that an employee's name appears on a payroll, the date that the Employer hired the employee should be written in after the employee's name.

C. Inspection of Records. Each Employer must provide full access to its employment records to the Chief Procurement Officer, the Commissioner, the Inspector General or any duly authorized representative of any of them. Each Employer must maintain all relevant personnel data and records for a period of at least 3 years after final acceptance of the Work. At the direction of the Commissioner, affidavits and other supporting documentation may be required of each Employer to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

D. Level of Effort. Efforts on the part of each Employer to provide utilization of City Residents that are not sufficient for the granting of a waiver request as provided for in the standards and procedures developed by the Chief Procurement Officer will not suffice to replace the actual, verified achievement of the requirements of this section concerning the worker hours performed by City Residents.

E. Shortfalls; Liquidated Damages. When the Work is completed, in the event that the City has determined that Licensee has failed to ensure the fulfillment of the requirement of this section concerning the worker hours performed by City Residents or failed to report in the manner as indicated above, the City will thereby be damaged in the failure to provide the benefit of demonstrable employment to Chicagoans to the degree stipulated in this section. Therefore, in such a case of non-compliance, it is agreed that 1/20 of 1% of the aggregate hard construction costs of the Improvement Costs (the product of .0005 x such aggregate hard construction costs) (as evidenced by approved contract value for the actual contracts) must be surrendered by Licensee to the City as liquidated damages, and not as a penalty, in payment for each percentage of shortfall toward the stipulated residency requirement. Failure to report the residency of employees entirely and correctly will result in the surrender of the entire liquidated damages as if no Chicago residents were employed in either of the categories. The willful falsification of statements and the certification of payroll data may subject Licensee and/or the Subcontractors to prosecution. The City may draw against the Security any amounts that appear to be due to the City under this provision pending the City's determination as to the full amount of liquidated damages due on completion of the Work.

F. Nothing set forth in this section acts as a limitation upon the "Notice of Requirements for Affirmative Action to Ensure Equal Employment Opportunity, Executive Order 11246" and "Standard Federal Equal Employment Opportunity, Executive Order 11246," or other affirmative action required for equal opportunity under the provisions of this Agreement or related documents, as applicable.

G. Inclusion in Subcontracts. Licensee must cause or require the provisions of this section to be included in all construction Subcontracts related to the Work.

5.7 Licensing of General Contractor.

This Agreement is subject to Chapter 4-36 of the Municipal Code which requires all persons acting as a general contractor (as defined in Chapter 4-36) to be licensed as a general contractor by the City. Licensee's failure to ensure that any general contractor working on Improvements complies with Chapter 4-36 will be an Event of Default.

5.8 Prevailing Wages.

In connection with the construction, repair, and maintenance of Improvements, Licensee must comply with the applicable provisions of 820 ILCS 130/0.01 et seq. regarding the payment of prevailing wages, and the most recent Illinois Department of Labor schedule of prevailing wages, and any successors to them. Licensee must insert appropriate provisions in all Subcontracts covering construction work under this Agreement to ensure compliance of all construction Subcontractors with the foregoing wage statutes and regulations.

5.9 Subcontractor Certifications.

Licensee must require all Subcontractors performing Work in connection with this Agreement to be bound by the following provision and Licensee must cooperate fully with the City in exercising the rights and remedies described below or otherwise available at law or in equity:

“Subcontractor certifies and represents that Subcontractor and any entity or individual that owns or controls, or is controlled or owned by, or is under common control or ownership with Subcontractor is not currently indebted to the City and will not at any time during the Term be indebted to the City, for or on account of any delinquent taxes, liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. In addition to any other rights or remedies available to the City at law or in equity, Subcontractor acknowledges that any breach or failure to conform to this certification may, at the option and direction of the City, result in the withholding of payments otherwise due to Subcontractor for services rendered in connection with the Agreement and, if the breach or failure is not resolved to the City's satisfaction within a reasonable time frame specified by the City in writing, may result in the offset of any such indebtedness against the payments otherwise due to Subcontractor and/or the termination of Subcontractor for default (in which case Subcontractor will be liable for all excess costs and other damages resulting from the termination.)”

#### 5.10 MBE/WBE Compliance.

Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises (“MBE/WBE”) in the design and construction of Licensee’s Improvements, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 26% MBE and 6% WBE. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 7 and should be used by Licensee’s Contractors. Licensee must submit to DCASE completed Schedules C’s and D’s from its design and construction Contractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to DCASE, in a form and frequency determined by the Commissioner, documenting its Contractors’ compliance with their commitments. For all things relating to MBE/WBE compliance, those functions will be performed by the Commissioner and not the CPO. However, firms will be certified by DPS.

#### 5.11 Performance Bond

A Performance and Payment Bond is required for this contract.

The Licensee must, within [five/seven] calendar days of receipt of written notice from the City, furnish a Performance and Payment Bond in the amount of [amount]. The Bond must be on the Contractor’s Performance and Payment Bond form, a specimen which is attached as Exhibit 5, issued by a surety that is satisfactory to the Commissioner and the City Comptroller, and comply with the provisions of 30 ILCS 550/1 et seq. and MCC Section 2-92-030.

#### 5.12 Security Deposit

As security for the performance of its obligations under this License, Licensee upon its execution of this Agreement, shall provide to the City a Security Deposit in form of cash in the amount of \$1,000. The Security Deposit may be drawn upon by Commissioner to cure any default of Licensee under this License, and upon notice by Commissioner of such drawing, Licensee shall fully replenish the Security Deposit by immediately paying to City the amount so applied in cash. Within thirty (30) days after the expiration of the License, provided Licensee is not in default hereunder, Commissioner shall return to Licensee the balance, if any, of any cash deposited as the Security Deposit. The Security Deposit shall not be deemed an advance payment of any fees due under this Agreement or a measure of damages for any default by Licensee under this License, nor shall it be a bar or defense to any action which City may at any time commence against Licensee. City shall not be required to segregate the Security Deposit from its general funds. Licensee shall not be entitled to any interest on the Security Deposit.

## **ARTICLE 6 TERM OF AGREEMENT**

### 6.1 Term.

The term of this Agreement is the Term as defined in Article 3, unless this Agreement is terminated earlier in accordance with its terms.

### 6.2 Return of the Licensed Space and Removal of Improvements.

A. At the termination or expiration for any reason of this Agreement, Licensee must promptly, peaceably, quietly and in good order quit, deliver up and return the Licensed Space in good condition and repair, ordinary wear and tear and damage by fire or other casualty excepted.

B. Licensee must remove all Licensee personal property and trade fixtures from the Licensed Space before the date of termination or expiration. Any personal property or trade fixtures remaining in the Licensed Space 48 hours after the date of termination or expiration shall be deemed abandoned, and the City may dispose of such personal property or trade fixtures in the Commissioner's sole discretion, and Licensee shall have no claim to the proceeds, if any, from such disposition.

C. Further, at the Commissioner's request (which request will be given in writing at least 30 days before the expiration or as soon as possible after termination of the Term), Licensee must remove all Improvements installed by or for Licensee, or Licensee's agents, employees or Subcontractors. Licensee must also secure any plumbing and remove, obliterate or paint out any and all of its signs, advertising and displays as the Commissioner or his designated representative may direct, and repair any holes or other damage left or caused by Licensee.

D. Licensee must repair any damage to the Licensed Space caused by Licensee's removal of Licensee personal property, trade fixtures and Improvements. All the removal and repair required of Licensee under this section are at Licensee's sole cost and expense.

E. If Licensee fails to perform any of its foregoing obligations, then the Commissioner may cause the obligations to be performed by Department personnel or City contractors, and Licensee must pay the cost of the performance, together with interest thereon at the Default Rate from and after the date the costs were incurred until receipt of full payment therefor.

### 6.3 Early Termination.

Notwithstanding anything to the contrary set forth in this License, the Commissioner may terminate this Agreement without cause for any reason, in the Commissioner's sole discretion, upon at least thirty (30) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall vacate the Licensed Space as if the Agreement had expired on that date. Upon Licensee's vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

## ARTICLE 7 FEES

### 7.1 Fees Payable.

A. In consideration of City granting Licensee a license to operate its Concession in the Concession Space and a right to Storage Space, if any, Licensee must pay the following, without notice or demand: the Fixed Fee and the Percentage Fee (collectively, "**Fees**") as follows:

- (i) Fixed Fee. The "**Fixed Fee**" is a lump sum annual fee that is payable in one lump sum on [insert month, date] of each License Year.
- (ii) Percentage Fee. The "Percentage Fee" is an amount equal to the Percentage Rate set forth in Exhibit 2 multiplied by Gross Revenues for each License Year, including the Initial License Year. The Percentage Fee is due annually on or before [insert month, date] of the succeeding License Year. The Percentage Rate applicable to this Agreement is \_\_\_\_%.

Failure by Licensee to pay Fees, or any portion thereof, when due is an Event of Default.

B. Impositions. Licensee must timely pay, as and when due, any and all taxes, assessments, fees, and charges levied, assessed or imposed by a governmental unit upon this Agreement, the Licensed Space, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Space (collectively, "**Impositions**"). Licensee must provide the Commissioner with copies of any business licenses or permits required for the Licensee to operate the Concession. Nothing in this Agreement precludes Licensee from contesting the amount of an Imposition, including those taxes or charges enacted or promulgated by City, but unless otherwise allowed by the entity imposing the tax or charge, Licensee must pay the tax or charge pending the judicial or administrative decision on the Licensee's contest. Failure of Licensee to pay any Imposition when due, except to the extent that Licensee is allowed to withhold payment while contesting the amount of the Imposition, will constitute an Event of Default.

C. Fees under this Agreement are not considered to be a tax and are independent of any Imposition levied by the City on the Licensee's business. Further, the payment of the Fees under this Agreement is independent of each and every other covenant and agreement contained in this Agreement, and Licensee must pay all Fees without any set off, abatement, counterclaim or deduction whatsoever except as otherwise expressly provided in this Agreement.

7.2 Time of Payments.

A. On or before [insert month, date] of each License Year, Licensee must pay to the City the Fixed Fee.

B. On or before [insert month, date], Licensee must pay the Percentage Fee for the preceding year as well as provide the City a certified statement of Gross Revenues.

7.3 Material Underpayment or Late Payment.

Without waiving any other remedies available to the City, if:

- (i) Licensee underpaid Fees due in any calendar year by more than 5%, or
  - (ii) Licensee failed to make any Fee payments within 5 days of the date due,
- then Licensee must pay, in addition to the amount due the City, interest on the amount of underpayment or late payment at the Default Rate. Interest on the amount underpaid accrues from the date on which the original payment was due until paid in full. The provision for the payment of interest does not constitute an authorization by the City of underpayment or late payment.

7.4 Reports.

A. Monthly. Licensee must furnish to the Commissioner on or before the 15th day of each calendar month falling wholly or in part within the Term of this Agreement during which Licensee has operated in the Concession Space a complete statement, certified by Licensee, of the amount of Gross Revenues derived from the Concession Space by Licensee during the preceding month.

B. Daily and/or Weekly. Licensee will furnish to the Commissioner daily and/or weekly sales reports, if requested, breaking down all sales and Gross Revenues by each separate Concession Space, as well as other reports regarding the operation of the Concession that may be reasonably requested by the Commissioner. If so requested, Licensee will provide Commissioner with statistical information regarding the number and type of transactions occurring at each Concession Space, in the form specified by the Commissioner.

C. Annually or more often.

- (i) Licensee also must furnish to Commissioner no later than [insert month, date] of each License Year falling wholly or in part within the Term of this Agreement, and within 120 days after the expiration or termination of this



Agreement, a complete statement of revenues certified by an certified public accountant engaged by Licensee, showing in all reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Licensed Space during the preceding License Year and copies of all returns and other information filed with respect to Illinois sales and use taxes as well as such other reasonable financial and statistical reports as the Commissioner may, from time to time, require by written notice to Licensee.

- (ii) The annual statement must include a breakdown of Gross Revenues on a month by month basis and an opinion of a certified public accountant that must include the following language, or language of similar purport:

"We, a firm of independent certified public accountants, have examined the accompanying statement reported to the City of Chicago by [\_\_\_\_\_] for the year ended \_\_\_\_\_ relating to its operations at the Cultural Center pursuant to an Agreement dated \_\_\_\_\_, \_\_\_\_\_. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.

In our opinion, the accompanying statement showing gross revenues of \$\_\_\_\_\_ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended \_\_\_\_\_."

D. All such reports and statements must be prepared on a form approved by the Commissioner and must, among other things, provide a breakdown of the Gross Revenues by category of Products and an analysis of all Percentage Fees due and payable to the City with respect to the period in question. If Licensee fails to timely furnish to the Commissioner any monthly or annual statement required under this Agreement or if the independent certified public accountant's opinion is qualified or conditioned in any manner, the Commissioner has the right (but is not obligated) without notice, to conduct an audit of Licensee's books and records and to prepare the statements at Licensee's expense. Licensee must also provide the Commissioner with such other financial or statistical reports and information concerning the Licensed Space or any part thereof, in the form as may be reasonably required from time to time by the Commissioner.

#### 7.5 Books, Records and Audits.

A. Except as provided below, Licensee must prepare and maintain at its office in Chicago full, complete and proper books, records and accounts in accordance with generally accepted accounting procedures relating to and setting forth the Gross

Revenues, including but not limited to Gross Revenues generated by sales of Products for cash, debit, check, gift certificate, credit, or any other form of compensation, and must require and cause its operations personnel and Subcontractors to prepare and keep books, source documents, records and accounts relating to operations within the Cultural Center sufficient to substantiate those kept by Licensee. The books and source documents to be kept by Licensee must include true copies of all federal, state and local tax returns filed with respect to Licensee's Concession operation and reports, records of inventories and receipts of Products, daily receipts from all sales and other pertinent original sales records and records of any other transactions conducted in or from the Licensed Space by Licensee.

B. Licensee must record at the time of each sale or other transaction, in the presence of the customer, all receipts from the sale or other transaction, whether for cash, credit or otherwise, in a point of sale system having a cumulative total that must be recorded or sealed in a manner approved by the Commissioner and that must possess such other features as required by the Commissioner. The books, records and accounts, including any sales tax reports that Licensee may be required to furnish to any government or governmental agency, must at all reasonable times be open to the inspection (including the making of copies or extracts) of the Commissioner, the Commissioner's auditor or other authorized representative or agent at the Licensed Space or Licensee's other offices in Chicago for a period of at least 3 years after the expiration of each calendar year falling wholly or in part within the Term.

C. The acceptance by the Commissioner of payments of any Percentage Fee is without prejudice to the Commissioner's right to conduct an examination of the Licensee's books and records relating to Gross Revenues and of inventories of Products at the Concession Space, in order to verify the amount of Gross Revenues made in and from the Concession Space.

D. After providing Licensee at least 3 days prior oral or written notice, the Commissioner may inspect the books and records of Licensee. Further, at its option, the Commissioner may at any reasonable time, upon no less than 10 days prior written notice to Licensee cause a complete audit to be made of Licensee's entire records relating to the Concession Space for the period covered by any statement issued by Licensee as above set forth. If the audit discloses that Licensee's statement of Gross Revenues is understated to the extent of:

- (i) 3% or more, Licensee must promptly pay the City the cost of the audit in addition to the deficiency (and any interest on the deficiency at the Default Rate), which deficiency is payable in any event; and if
- (ii) 5% or more, an Event of Default is considered to have occurred, and in addition to all other remedies available under this Agreement, at law, or in equity, the Commissioner has the right to terminate this Agreement immediately upon giving notice to Licensee, without any opportunity for Licensee to cure.

In addition to the foregoing, and in addition to all other remedies available to the City, if Licensee or the City's auditor schedules a date for an audit of Licensee's records and Licensee fails to be available or otherwise fails to comply with the reasonable

requirements for the audit, Licensee must pay all reasonable costs and expenses associated with the scheduled audit.

7.6 Revenue Control.

Upon the request of the Commissioner Licensee must make available monthly sales data for each Concession Space ("Point of Sale Data"), reflecting the amount of each sales transaction, items sold per transaction, time and date of the transaction, and specifying the sales category applicable to each item sold.

7.7 Lien.

In addition to any liens as may arise under Illinois law, the City has a contractual lien under this Agreement on Licensee's personal property and Improvements located on the Licensed Space, as security for non-payment of any Fees due.

**ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY**

8.1 Insurance.

Licensee must, at its sole expense, procure and maintain at all times during the Term of this Agreement, and during any time period Licensee is required to return to the Licensed Space for any reason whatsoever, the types of insurance specified in Exhibit 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.2 Indemnification.

Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees (collectively, the "Indemnified Parties,") from and against any and all Losses (as defined below), in consequence of the granting of this Contract or arising out of or being in any way connected with the Licensee's performance under this Contract, except as otherwise provided in 740 ILCS 35 "Construction Contract Indemnification for Negligence Act" if it applies, including those related to: injury, death or damage of or to any person or property; any infringement or violation of any property right (including any patent, trademark or copyright); failure to pay or perform or cause to be paid or performed Licensee's covenants and obligations as and when required under this Contract or otherwise to pay or perform its obligations to any subcontractor; the City's exercise of its rights and remedies under this Contract; and injuries to or death of any employee of Licensee or any subcontractor under any workers compensation statute. When 740 ILCS 35 applies, indemnification provided by the Licensee to the Indemnified Parties will be to the maximum extent permitted under applicable law.

"Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands,

actions, suits, proceedings, fines, judgments or settlements, any or all of which in any way arise out of or relate to the negligent or otherwise wrongful errors, acts, or omissions of Licensee, its employees, agents and subcontractors.

The Licensee will promptly provide, or cause to be provided, to the Commissioner and the Corporation Counsel copies of such notices as Licensee may receive of any claims, actions, or suits as may be given or filed in connection with the Licensee's performance or the performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder.

At the City Corporation Counsel's option, Licensee must defend all suits brought upon all such Losses and must pay all costs and expenses incidental to them, but the City has the right, at its option, to participate, at its own cost, in the defense of any suit, without relieving Licensee of any of its obligations under this Contract. Any settlement must be made only with the prior written consent of the City Corporation Counsel, if the settlement requires any action on the part of the City.

The Licensee shall be solely responsible for the defense of any and all claims, demands, or suits against the Indemnified Parties, including without limitation, claims by an employee, subcontractors, agents, or servants of Licensee even though the claimant may allege that the Indemnified Parties were in charge of the work or service performed under the Contract, that it involves equipment owned or furnished by the Indemnified Parties, or allege negligence on the part of the Indemnified Parties. The City will have the right to require Licensee to provide the City with a separate defense of any such suit.

To the extent permissible by law, Licensee waives any limits to the amount of its obligations to indemnify, defend or contribute to any sums due to third parties arising out of any Losses, including but not limited to any limitations on Licensee's liability with respect to a claim by any employee of Licensee arising under the Workers Compensation Act, 820 ILCS 305/1 et seq. or any other related law or judicial decision (such as, *Kotecki v. Cyclops Welding Corporation*, 146 Ill. 2d 155 (1991)). The City, however, does not waive any limitations it may have on its liability under the Illinois Workers Compensation Act, the Illinois Pension Code or any other statute.

The indemnities in this section survive expiration or termination of this Contract for matters occurring or arising during the term of this Contract or as the result of or during the Licensee's performance of work or services beyond the term. Licensee acknowledges that the requirements set forth in this section to indemnify, keep and save harmless and defend the City are apart from and not limited by the Licensee's duties under this Contract, including the insurance requirements set forth in the Contract.

## **ARTICLE 9 DEFAULT, REMEDIES AND TERMINATION**

### **9.1 Events of Default.**

The following (A) through (N) constitute Events of Default by Licensee under this Agreement. The Commissioner will notify Licensee in writing of any event that the Commissioner believes to be an Event of Default. If the Commissioner considers it to be

in the City's best interests, he may elect not to declare default or to terminate this License Agreement. The parties acknowledge that this provision is solely for the benefit of the City and that if the Commissioner permits Licensee to continue to provide the Concession despite one or more events of default, Licensee is in no way relieved of any of its responsibilities, duties or obligations under this License Agreement, nor does the City waive or relinquish any of its rights. Licensee will be given an opportunity to cure the Event of Default within a reasonable period of time, as determined by the Commissioner, but not to exceed 30 days after written notice of the Event of Default; provided, that (i) if a provision of this Agreement provides for a different cure period for a particular Event of Default, that different cure period will apply; (ii) if a provision of this Agreement does not allow a right to cure a particular Event of Default, there will be no right to cure; and (iii) if neither (i) or (ii) apply and if the promise, covenant, term, condition or other non-monetary obligation or duty cannot be cured within the time period granted by the Commissioner, but Licensee promptly begins and diligently and continuously proceeds to cure the failure within the time period granted and after that continues to diligently and continuously proceed to cure the failure, and the failure is reasonably susceptible of cure within 45 days from delivery of the notice, Licensee will have the additional time, not in any event to exceed 45 days, to cure the failure.

A. Any material misrepresentation made by Licensee to the City in the inducement to City to enter this Agreement or in the performance of this Agreement. There is no right to cure this Event of Default.

B. Licensee's failure to make any payment in full when due under this Agreement and failure to cure the default within five days after the City gives written notice of the non-payment to Licensee. In addition, Licensee's failure to make any such payment within five days after the written notice more than three times in any License Year constitutes an Event of Default without the necessity of the City giving notice of the fourth failure to Licensee or allowing Licensee any opportunity to cure it.

C. Licensee's failure to promptly and fully keep, fulfill, comply with, observe, or perform any promise, term, condition, or obtain and all licenses necessary for the Concession, or other non-monetary obligation or duty of Licensee contained in this Agreement.

D. Licensee's failure to promptly and fully perform any obligation or duty, or to comply with any restriction of Licensee contained in this Agreement concerning Transfer or Change in Ownership, whether directly or indirectly, of Licensee's rights or interests in this Agreement or of the ownership of Licensee.

E. Licensee's failure to provide or maintain the insurance coverage required under this Agreement (including any material non-compliance with the requirements) and the failure to cure the Event of Default within two days following oral or written notice from the Commissioner; or, if the noncompliance is non-material, the failure to cure the Event of Default within 20 days after the Commissioner gives written notice. The Commissioner, in his sole discretion, will determine if noncompliance is material.

F. Licensee's failure to conduct Concession operations in any Concession Space at all times Licensee is required to do so under this Agreement.

G. Licensee's failure to begin or to complete its Improvements on a timely basis or to timely open for business in the Licensed Space.

H. An Event of Default by Licensee or any Affiliate under any other agreement it may presently have or may enter into with the City during the Term of this Agreement and failure to cure the default within any applicable cure period.

I. Licensee or Guarantor, if any, does any of the following and the action affects Licensee's ability to carry out the terms of this Agreement:

- (i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time; or
- (ii) fails to pay its debts generally as they mature; or
- (iii) seeks the benefit of any present or future federal, state or foreign insolvency statute; or
- (iv) makes a general assignment for the benefit of creditors, or
- (v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or
- (vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.

J. An order for relief is entered by or against Licensee or Guarantor (if any) under any chapter of the Bankruptcy Code or similar law in any foreign jurisdiction and is not stayed or vacated within 60 days following its issuance.

K. Licensee is dissolved.

L. A violation of law that results in a guilty plea, a plea of nolo contendere, guilty finding, or conviction of a criminal offense, by Licensee, or any of its directors, officers, partners or key management employees directly or indirectly relating to this Agreement, and that may threaten, in the sole judgment of Commissioner, Licensee's performance of this Agreement in accordance with its terms.

M. Licensee's failure to comply with the Cultural Center Concession Artwork Standards.

N. Any failure to perform, act, event or omission that is specifically identified as an Event of Default elsewhere in this Agreement.

## 9.2 Remedies.

If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement or at law or equity, the City through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

A. Terminate this Agreement and exclude Licensee from the Licensed Space. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the

Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space on the date specified in the notice, to be no less than five days after the date of the notice, without any right on the part of Licensee after that to save the Agreement by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. At the expiration of the time limit in the notice, this Agreement wholly ceases and expires and becomes void with respect to the Licensed Space in the same manner and with the same force and effect (except as to Licensee's liability) as if the date fixed in the notice were the date in this Agreement stated for expiration of the Term.

B. Recover all Fees and any other amounts due that have accrued and are then due and payable and also all damages available at law or under this Agreement. If the Agreement is terminated, whether in its entirety or with respect to a part of the Licensed Space, the damages will include any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, calculated as provided in this Agreement or, if not fixed, as reasonably estimated; provided, however, that such damages based on Fees that Licensee would have been obligated to pay will cease when and if City executes a license agreement with a replacement licensee for the Licensed Space but only to the extent that the Fees paid by the replacement licensee equal or exceed the Fees that Licensee would have been obligated to pay. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default.

C. Remove from the Licensed Space all inventory, equipment, machinery, trade fixtures and personal property of any kind or nature, whether owned by Licensee or by others. If such items listed in the immediately preceding sentence are not collected by Licensee with five days, the City may dispose of such property in any manner selected by the Commissioner.

D. Seek and obtain specific performance, a temporary restraining order or an injunction, or any other appropriate equitable remedy.

E. Seek and obtain money damages; including special, exemplary, incidental and consequential damages.

F. Deem Licensee and Affiliates non-responsible in future contracts or concessions to be awarded by the City.

G. Declare Licensee and Affiliates in default under any other existing contracts or agreements they might have with the City and to exercise any remedies available under those other contracts or agreements.

H. Accept the assignment of any and all Subcontracts between Licensee and the design and construction Subcontractors.

I. Require Licensee to terminate a Subcontractor that is causing breaches of this Agreement.

The remedies under the terms of this Agreement are not intended to be exclusive of any other remedies.

### 9.3 Effect of Default and Remedies

A. Licensee, for itself and on behalf of any and all persons claiming through or under it (including creditors of all kinds), waives all right that they or any of them might have under or by reason of any present or future law, to have a continuance of this Agreement for the Term, as it may have been extended, the termination of this Agreement as provided in this Agreement.

B. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for subsequent violation or Event of Default, or for continuation or repetition of the original violation or Event of Default. Licensee has no claim of any kind against the City by reason of the City's exercise of any of its rights as set forth in this Agreement or by reason of any act incidental or related to the exercise of rights.

C. All rights and remedies of the City under this Agreement are separate and cumulative and none excludes any other right or remedy of the City set forth in this Agreement or allowed by law or in equity. No termination of this Agreement deprives the City of any of its remedies against Licensee for Fees, or other amounts due or for damages for the Licensee's breach of this Agreement. Every right and remedy of the City under this Agreement survives the expiration of the Term or the termination of this Agreement.

## **ARTICLE 10 SPECIAL CONDITIONS**

### 10.1 Warranties and Representations.

In connection with the execution of this Agreement, Licensee warrants and represents statements (A) through (J) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.1 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontractors, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and



covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontractor is a partnership or joint venture, Licensee must also include provisions in its Subcontract insuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

A. Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement.

B. Licensee is qualified to do business in the State of Illinois; and Licensee has a valid current business privilege license to do business in the State of Illinois and the City of Chicago, if required by applicable law.

C. The person signing this Agreement on behalf of Licensee has been duly authorized to do so by Licensee; all approvals or consents necessary in order for Licensee to execute and deliver this Agreement have been obtained; and neither the execution and delivery of this Agreement, the consummation of the transactions contemplated, nor the fulfillment of or compliance with the terms and conditions of this Agreement:

- (i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any License or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or
- (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

D. There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse effect on the operations, properties, business or finances of Licensee.

E. This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms, subject to applicable bankruptcy, insolvency, moratorium and other laws affecting creditors' rights and remedies generally and by the application of equitable principles.

F. No officer, agent or employee of the City is employed by Licensee or has a financial interest directly or indirectly in this Agreement, a Subcontract under it, or the compensation to be paid under it except as may be permitted in writing by the Board of Ethics established under Chapter 2-156 of the Municipal Code and as may otherwise be permitted by law.

G. Licensee has not and will not knowingly use the services of any person or entity for any purpose in its performance under this Agreement, when such person or entity is ineligible to perform services under this Agreement or in connection with it, as a result of any local, state or federal law, rule or regulation, or when such person or entity has an interest that would conflict the performance of services under this Agreement.

H. Neither Licensee nor any Affiliate of Licensee is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U. S. Department of Commerce or their successors, or on any other list of persons with which the City may not do business under applicable law: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, and Entity List, and the Debarred List.

I. Licensee, and to the best of Licensee's knowledge, its Affiliates, Subcontractors, any of their respective owners holding 7.5% or more beneficial ownership interest, and any of Licensee's directors, officers, members, or partners:

- (i) currently have no interest, directly or indirectly, that conflicts in any manner or degree with Licensee's performance under this Agreement and will not at any time during the Term have any interest nor acquire any interest, directly or indirectly, that conflicts or would or may conflict in any manner or degree with Licensee's performance under this Agreement;
- (ii) have no outstanding parking violation complaints or debts, as the terms are defined in Section 2-92-380 of the Municipal Code (with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding) and agrees that, for the Term, they will promptly pay any debts, outstanding parking violation complaints or monetary obligations to the City that may arise during the Term, with the exception of any debt or obligation that is being contested in a pending administrative or judicial proceeding;
- (iii) are not in default under any other City contract or agreement as of the Effective Date, nor have been deemed by the City to have been in default of any other City contract or agreement within five years immediately preceding the Effective Date;
- (iv) are not in violation of the provisions of § 2-92-320 of the Municipal Code pertaining to certain criminal convictions or admissions of guilt and are not currently debarred or suspended from contracting by any Federal, State or local governmental agency;
- (v) are not delinquent in the payment of any taxes due to the City; and

- (vi) will not make use of the Licensed Space in any manner that might interfere that otherwise constitute a hazard to the operations of the Cultural Center or to the public generally.

J. Except only for those representations, statements, or promises expressly contained in this Agreement, including any Exhibits attached to this Agreement and incorporated by reference in this Agreement, no representation, warranty of fitness, statement or promise, oral or in writing, or of any kind whatsoever, by the City, its officials, agents, or employees, has induced Licensee to enter into this Agreement or has been relied upon by Licensee, including any with reference to:

- (i) the meaning, correctness, suitability or completeness of any provisions or requirements of this Agreement;
- (ii) the nature of the Concession license being granted;
- (iii) the nature, quantity, quality or volume of any materials, equipment, labor and other facilities, needed for the performance of this Agreement;
- (iv) the general conditions that may in any way affect this Agreement or its performance;
- (v) the compensation provisions of this Agreement; or
- (vi) any other matters, whether similar to or different from those referred to in clauses (i) through (iv) immediately above, affecting or having any connection with this Agreement, the negotiation of this Agreement, any discussions of this Agreement, the performance of this Agreement or those employed in connection with it.

10.2 Business Documents, Disclosure of Ownership Interests and Maintenance of Existence.

A. Licensee must provide evidence of its authority to do business in the State of Illinois including, if applicable, certifications of good standing from the Office of the Secretary of State of Illinois, and appropriate resolutions or other evidence of the authority of the persons executing this Agreement on behalf of Licensee.

B. Licensee has provided the Commissioner with an Economic Disclosure Statement and Affidavit (“**EDS**”) for itself and EDSs for all entities with an ownership interest of 7.5 percent or more in Licensee, copies of which have been scanned for viewing on the City’s website. Upon request by the Commissioner, Licensee must further cause its Subcontractors, and proposed Transferees (and their respective 7.5 percent owners) to submit an EDS to the Commissioner. Licensee must provide the Commissioner, upon request, a “no change” affidavit if the information in the EDS(s) previously supplied remains accurate, or revised and accurate EDS(s) if the information contained in the EDS(s) has changed. In addition, Licensee must provide the City revised and accurate EDS(s) within 30 days of any event or change in circumstance that renders the EDS(s) inaccurate. Failure to maintain accurate EDS(s) on file with the City is an Event of Default.

### 10.3 Licenses and Permits.

Licensee must in a timely manner consistent with its obligations under this Agreement, secure and maintain, or cause to be secured and maintained at its expense, the permits, licenses, authorizations and approvals as are necessary under federal, state or local law for Licensee, and Subcontractors: to operate the Concession; to construct, operate, use and maintain the Licensed Space; and otherwise to comply with the terms of this Agreement and the privileges granted under this Agreement. Licensee must promptly provide copies of any required licenses and permits to the Commissioner.

### 10.4 Confidentiality.

Except as may be required by law during or after the performance of this Agreement, Licensee will not disseminate any non-public information regarding this Agreement or the Concession operations without the prior written consent of the Commissioner, which consent will not be unreasonably withheld or delayed. If Licensee is presented with a request for documents by any administrative agency or with a subpoena duces tecum regarding any documents that may be in its possession by reason of this Agreement, Licensee must immediately give notice to the City's Corporation Counsel. The City may contest the process by any means available to it before the records or documents are submitted to a court or other third party. Licensee, however, is not obligated to withhold the delivery beyond that time as may be ordered by the court or administrative agency, unless the subpoena or request is quashed or the time to produce is otherwise extended. Licensee must require each prospective Subcontractor to abide by such restrictions in connection with their respective Subcontracts.

### 10.5 Subcontracts and Assignments.

A. The City expressly reserves the right to assign or otherwise transfer all or any part of its interest under this Agreement, at any time and to any third party. Upon assignment to any successor or assignee of the City's right, title and interest in and to the Cultural Center, the City is forever relieved, from and after the date of the assignment, of any and all obligations arising under or out of this Agreement, to the extent the obligations are assumed by the successor or assignee.

B. Limits on Licensee's transfers and changes in ownership:

- (i) Licensee may not sell, assign, sublicense, convey, pledge, encumber or otherwise transfer (individually and collectively, "**Transfer**") all or any part of its rights or interests in or to this Agreement, the Licensed Space, or otherwise permit any third party to use the Licensed Space, without prior consent of the City, which consent may be given or denied in the City's sole discretion. Consent by the City does not relieve Licensee from obtaining further consent from the City for any subsequent Transfer. Transfers may require approval of the City Council; if such approval is not required, then approval of the Commissioner is required. Consent by the City to any Transfer does not relieve Licensee from the requirement of obtaining consent from the City for any subsequent Transfer. Transfers

that have the effect of granting a third party a security interest in this Agreement or the Licensed Space as collateral for Licensee financing are strictly prohibited and, if entered into by Licensee, are an Event of Default.

- (ii) Except as otherwise provided below, any transaction involving a change of any ownership interest in Licensee, whether to an Affiliate, subsidiary or otherwise, or the transfer of an interest in any holder of a direct or indirect ownership interest in Licensee, or any merger or consolidation of Licensee (individually and collectively, "**Change in Ownership**"), is subject to the consent of:
  - a. City Council, in its sole discretion, if consent by City Council was required for approval of this Agreement, or
  - b. the Commissioner, in his sole discretion, if consent by City Council was not required for approval of this Agreement.
- (iii) If Licensee (or, if Licensee is a joint venture or other entity comprised of other entities, any of the entities comprising Licensee) is a corporation whose shares are traded at arms-length on a public exchange, any Change in Ownership involving 7.5% or more of the shares of Licensee's (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) stock is subject to the City's consent as set forth above. If Licensee (or if Licensee is a joint venture or other entity comprised of other entities, of any of the entities comprising Licensee) is a publicly traded corporation, a Change in Ownership of less than 7.5% does not require consent as set forth in (ii) above unless a series of such transactions results in a cumulative Change in Ownership of 7.5% or more.
- (iv) Consent by the City to any Change in Ownership does not relieve Licensee (or if Licensee is a joint venture, any of the entities comprising Licensee) from the requirement of obtaining consent from the City for any subsequent Change in Ownership.
- (v) Any Transfer or Change in Ownership made without the City's prior consent is an Event of Default subject to all remedies, including termination of this Agreement at the City's option, and does not relieve Licensee of any of its obligations under this Agreement for the balance of the Term. This section applies to prohibit a Transfer, such as an assignment by a receiver or trustee in any federal or state bankruptcy, insolvency or other proceedings or by operation of law. Under no circumstances will any failure by the Commissioner to act on or submit any request by Licensee or to take any other action as provided in this Agreement be deemed or construed to constitute consent to the Licensee's request by the Commissioner or by the City Council.
- (vi) Notwithstanding any permitted Transfer by Licensee of any rights under this Agreement, Licensee remains fully liable for all payments due to the

City under this Agreement and for the performance of all other obligations under this Agreement. In the event of a permitted Transfer of this Agreement, where the fees payable to Licensee exceed the License Fee or pro rata portion of the License Fee under this Agreement, as the case may be, for the Licensed Space, Licensee must pay the City quarterly, at the same time as the quarterly installments of the License Fee under this Agreement that are payable in quarterly installments, the excess of the fees payable to Licensee pursuant to the Transfer over the License Fee payable to the City under this Agreement.

- (vii) Any or all of the requests by Licensee for consents under this Section must be made in writing and provided to the Commissioner (a) at least 60 days prior to the proposed Transfer or Change in Ownership if the Commissioner's consent is required; and (b) at least 120 days prior to a proposed Transfer or Change in Ownership if the City Council's consent is required, unless the City determines that more time is required. All requests for consent must include copies of the proposed documents of Transfer or Change in Ownership, evidence of the financial condition, reputation and business experience of the proposed transferee, completed Economic Disclosure Statements and Affidavits for all involved parties in the form then required by the City, and such other documents as the City may reasonably require to evaluate the proposed Transfer or Change in Ownership. All documents of Transfer or Change in Ownership must completely disclose any and all monetary considerations payable to Licensee in connection with the Transfer or Change in Ownership. Consent to a Transfer or Change in Ownership proposed under this Agreement is in the sole discretion of the City and, as a condition of the consent, the City may require a written acknowledgment from Licensee that, notwithstanding the proposed Transfer or Change in Ownership, Licensee remains fully and completely liable for all obligations of Licensee under this Agreement; however, Licensee shall remain so liable regardless of whether or not the City requests a written acknowledgement.
- (viii) If any Transfer or Change in Ownership under this Agreement occurs, whether or not prohibited by this section, the Commissioner may collect the Fees payable under this Agreement from any transferee of Licensee and in that event will apply the net amount collected to the amounts payable by Licensee under this Agreement without, by doing so, releasing Licensee from this Agreement or any of its obligations under this Agreement. If any Transfer or Change in Ownership occurs without the consent of the City and the City collects compensation from any transferee of Licensee and applies the net amount collected in the manner described in the preceding sentence, the actions by the City are not deemed to be waiver of the covenant contained in this section and do not constitute acceptance of the transferee by the City.

(ix) All reasonable costs and expenses incurred by the City in connection with any prohibited or permitted Transfer or Change in Ownership must be borne by Licensee and are payable to the City.

C. The provisions of this Agreement, to the extent applicable, are deemed a part of any contract between Licensee and Subcontractor.

#### 10.6 Compliance with Laws.

Licensee must at all times observe and comply with all applicable laws, statutes, ordinances, rules, regulations, court orders and executive or administrative orders and directives of the federal, state and local government, now existing or later in effect (whether or not the law also requires compliance by other parties), including the Americans with Disabilities Act and Environmental Laws, that may in any manner affect the performance of this Agreement (collectively, “**Laws**”), and must not use the Licensed Space, or allow the Licensed Space to be used, in violation of any Laws or in any manner that would impose liability on the City or Licensee under any Laws. Licensee must notify the City within seven days of receiving notice from a competent governmental authority that Licensee or any of its Subcontractors may have violated any Laws. Provisions required by any Law to be inserted in this Agreement are deemed inserted in this Agreement whether or not they appear in this Agreement or, upon application by either party, this Agreement will be amended to make the insertion; however, in no event will the failure to insert the provisions before or after this Agreement is signed prevent its enforcement. Without limiting the foregoing, Licensee covenants that it will comply with all Laws, including but not limited to the following:

A. In connection with Section 2-92-320 of the Municipal Code, Licensee has executed an Economic Disclosure Statement and Affidavit which is attached to this Agreement as Exhibit 8 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8-10-1 et seq. Ineligibility under Section 2-92-320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2-92-320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

B. It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General of the City in any investigation or hearing undertaken under Chapter 2-56 of the Municipal Code. Licensee understands and will abide by all provisions of Chapter 2-56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractor as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

C. Licensee must not use or allow the Licensed Space to be used for the release, storage, use, treatment, disposal or other handling of any hazardous substance, as defined in any Environmental Laws, except in full compliance with all Environmental Laws. Licensee must not use or allow the Licensed Space to be used for the storage of any such hazardous substances except small amounts of cleaning fluids, business equipment materials (such as copy machine toner) and other small amounts of such hazardous substances customarily handled or used in connection with the Concession operations, all of which must be stored and used in compliance with all applicable Environmental Laws. Upon the expiration or termination of this Agreement, Licensee must vacate the Licensed Space to the City free from the presence and contamination of any hazardous substances.

D. In accordance with Section 11-4-1600(e) of the Municipal Code of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the “Waste Sections”):

7-28-390 Dumping on public way—Violation—Penalty;

7-28-440 Dumping on real estate without permit;

11-4-1410 Disposal in waters prohibited;

11-4-1420 Ballast tank, bilge tank or other discharge;

11-4-1450 Gas manufacturing residue;

11-4-1500 Treatment and disposal of solid or liquid waste;

11-4-1530 Compliance with rules and regulations required;

11-4-1550 Operational requirements;

11-4-1560 Screening requirements; and

any other sections listed in Section 11-4-1600(e), as it may be amended from time to time.

During the period while this Agreement is executory, Licensee’s or any Subcontractor’s violation of the Waste Sections, whether or not relating to the performance of this Agreement, constitutes a breach of and an Event of Default under this Agreement, for which the opportunity to cure, if curable, will be granted only at the sole designation of the Commissioner. Such breach and Event of Default entitles the City to all remedies under the Agreement, at law or in equity. This section does not limit the Licensee’s and its Subcontractors’ duty to comply with all Environmental Laws, in effect now or later, and whether or not they appear in this Agreement. Non-compliance with these terms and conditions may be used by the City as grounds for the termination of this Agreement, and may further affect the Licensee's eligibility for future City agreements.

E. Section 2-92-586 of the Municipal Code: The City encourages Licensee to use contractors and subcontractors that are firms owned or operated by individuals with disabilities, as defined by section 2-92-586 of the Municipal Code of the City of Chicago, where not otherwise prohibited by federal or state law.



F. Prohibition on Certain Contributions

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Licensee, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Licensee represents and warrants that since the date of public advertisement of the specification, request for qualifications, request for proposals or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Licensee or the date the Licensee approached the City, as applicable, regarding the formulation of this Contract, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

Licensee shall not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Identified Parties must not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011-4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011-4.

Violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Contract, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Contract, under Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

If Licensee violates this provision or Mayoral Executive Order No. 2011-4 prior to award of the Contract resulting from this specification, the Commissioner may reject Licensee's bid.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Licensee and the City that is (i) formed under the authority of MCC Ch. 2-92; (ii) for the purchase, sale or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved and/or authorized by the City Council.

"Contribution" means a "political contribution" as defined in MCC Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in MCC Ch. 2-156, as amended.

G. Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

H. Pursuant to MCC Sect. 2-156-030(b), it is illegal for any elected official, or any person acting at the direction of such official, to contact either orally or in writing any other City official or employee with respect to any matter involving any person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. In addition, no elected official may participate in any discussion in any City Council committee hearing or in any City Council meeting or vote on any matter involving the person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

Violation of MCC Sect. 2-156-030 by any elected official with respect to this contract will be grounds for termination of this contract. The term financial interest is defined as set forth in MCC Chapter 2-156.

I. Visual Rights Act.

(i) The Licensee will cause any artist who creates artwork for the Licensed Space to waive any and all rights in the artwork that may be granted or conferred on any work of visual art (the "Artwork") under Section 106A and Section 113 of the United States Copyright Act, (17 U.S.C. § 101 *et seq.*) (the "*Copyright Act*"). The waiver must include, but is not limited to, the right to prevent the removal, storage, relocation, reinstallation, or transfer of the Artwork. The Licensee acknowledges and will cause the artist to acknowledge that such removal, storage, relocation, reinstallation or transfer of the Artwork may result in the destruction, distortion, mutilation or other modification of the Artwork. Further, the Licensee acknowledges and consents and will cause the artist to acknowledge and consent that the Artwork may be incorporated or made part of a building or other structure in such a way that removing, storing, relocating, reinstalling or transferring the Artwork will cause the destruction, distortion, mutilation or other modification of the Artwork.

(ii) The Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees

and subcontractors, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

#### 10.7 Non-Discrimination.

A. Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that: (i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the construction of any Improvements within the Licensed Space and the furnishing of services in them, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the Licensed Space in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

B. It is an unlawful practice for Licensee to, and Licensee must at no time: (i) fail or refuse to hire, or discharge, any individual or discriminate against the individual with respect to his or her compensation, or the terms, conditions, or privileges of his or her employment, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (ii) limit, segregate, or classify its employees or applicants for employment in any way that would deprive any individual of employment opportunities or otherwise adversely affect his or her status as an employee, because of the individual's race, creed, color, religion, sex, age, handicap or national origin; or (iii) in the exercise of the privileges granted in this Agreement, discriminate or permit discrimination in any manner, including the use of the Licensed Space, against any person or group of persons because of race, creed, color, religion, national origin, age, handicap, sex or ancestry. Licensee must post in conspicuous places to which its employees or applicants for employment have access, notices setting forth the provisions of this non-discrimination clause.

C. Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec.

Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

D. Licensee must comply with the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. as amended and any rules and regulations promulgated in accordance with it, including the Equal Employment Opportunity Clause, 5 Ill. Admin. Code §750 Appendix A. Furthermore, Licensee must comply with the Public Works Employment Discrimination Act, 775 ILCS 10/0.01 et seq., as amended, and all other applicable state statutes, regulations and other laws.

E. Licensee must comply with the Chicago Human Rights Ordinance, sec. 2-160-010 et seq. of the Municipal Code, as amended, and all other applicable City ordinances and rules. Further, Licensee must furnish or must cause each of its Subcontractor(s) to furnish such reports and information as requested by the Chicago Commission on Human Relations.

F. Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right to any person, firm, or corporation to render accommodations and/or services to the public on the Licensed Space. Licensee must incorporate all of the above provisions in all agreements entered into with any sublicensees, suppliers of materials, furnishers of services, Subcontractors of any tier, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any such materials, labor or services in connection with this Agreement, and Licensee must require them to comply with the law and enforce the requirements. In all solicitations either by competitive bidding or negotiations by Licensee for work to be performed under a Subcontract, including procurements of materials or Licenses of equipment, each potential Subcontractor or supplier must be notified by Licensee of the Licensee's obligations under this Agreement relative to nondiscrimination.

G. Noncompliance with this Section will constitute a material breach of this Agreement; therefore, in the event of such breach, Licensee authorizes the City to take such action as federal, state or local laws permit to enforce compliance, including judicial enforcement. In the event of Licensee's noncompliance with the nondiscrimination provisions of this Agreement, the City may impose such sanctions as it or the Federal or state government may determine to be reasonably appropriate, including cancellation, termination or suspension of the Agreement, in whole or in part.

H. Licensee must permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City, the Commissioner or the Federal government to be pertinent to ascertain compliance with the terms of this Section. Licensee must furnish to any agency of the Federal or state government or the City, as required, any and all documents, reports and records required by Title 14, Code of Federal Regulations, Part 152, Subpart E, including an affirmative action plan and Form EEO-1.

## 10.8 National Emergency.

This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the Cultural Center, or the exclusive or non-exclusive use of the Cultural Center by the United States during the time of war or national emergency.

## 10.9 2014 Hiring Plan Prohibitions

A. The City is subject to the June 16, 2014 "City of Chicago Hiring Plan" (the "2014 City Hiring Plan") entered in *Shakman v. Democratic Organization of Cook County*, Case No 69 C 2145 (United States District Court for the Northern District of Illinois). Among other things, the 2014 City Hiring Plan prohibits the City from hiring persons as governmental employees in non-exempt positions on the basis of political reasons or factors.

B. Licensee is aware that City policy prohibits City employees from directing any individual to apply for a position with Licensee, either as an employee or as a subcontractor, and from directing Licensee to hire an individual as an employee or as a subcontractor. Accordingly, Licensee must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Licensee under this Contract are employees or subcontractors of Licensee, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Licensee.

C. Licensee will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

D. In the event of any communication to Licensee by a City employee or City official in violation of paragraph B above, or advocating a violation of paragraph C above, Licensee will, as soon as is reasonably practicable, report such communication to the Hiring Oversight Section of the City's Office of the Inspector General, and also to the head of the relevant City Department utilizing services provided under this Contract. Licensee will also cooperate with any inquiries by OIG Hiring Oversight.

#### 10.10 Multi-Project Labor Agreement.

(a) The City has entered into the Multi-Project Agreement (“PLA”) with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work. During the term of this Agreement, Licensee, sublicensees, and Subcontractors shall not contract or subcontract, nor permit any other person, firm, company, or entity to contract or subcontract, any construction, demolition, rehabilitation or renovation work for the project work covered under this Agreement or within the trade jurisdiction of the signatory labor organization, to be performed at the site of construction or off-site solely for installation at the premises, (including all Licensee improvements, if applicable), unless such work is performed only by a person, firm or company signatory, or will to become a signatory, to the applicable area-wide collective bargaining agreement(s) with the union(s) or the appropriate trade/craft unions(s) or subordinate body or affiliate of the Chicago & Cook County Building & Construction Trades Council (“Council”) or the Teamsters’ Joint Council No. 25.

(b) Said provisions of this Agreement shall be included in all requests for bids and/or proposals and shall be explicitly included in all contracts or subcontracts of whatsoever tier by all contractors and subcontractors; provided that the total project value exceeds \$25,000.00. In the event a dispute arises with respect to the applicability of the PLA to a particular project, the parties agree to submit said dispute to final and binding arbitration before an arbiter who shall be mutually agreed to by the parties.

#### 10.11 Minimum Wage.

Licensee agrees that this Agreement is subject to Mayoral Executive Order 2014-1 (“Executive Order 2014-1”), which provides for a fair and adequate Minimum Wage to be paid to employees of City concessionaries and their contractors, subcontractors and sublicensees. Licensee and any of its sublicensees and subcontractors must pay the Minimum Wage set forth in Executive Order 2014-1 and comply with any applicable regulations issued by the Chief Procurement Officer. Every July 1, the hourly wages shall increase in proportion to the increase, if any, in the Consumer Price Index for All Urban Consumers most recently published by the Bureau of Labor Statistics of the United States Department of Labor. Any hourly wage increase shall be rounded up to the nearest multiple of \$0.05. Such increase shall remain in effect until any subsequent adjustment is made.

As of July 1, 2019 the Minimum Wage for all employees to be paid pursuant to Executive Order 2014-1 is \$14.10 per hour. This requirement applies to any employee working at the Airport. When the employer takes an allowance for gratuities pursuant to 820 ILCS 105/3(c), the employer shall base the calculation of the amount to be paid by the employer to the employee on the minimum wage as set forth in 820 ILCS 105/3, and add \$1.00 per hour to that amount. As of July 1, 2017, the amount to be paid when taking an allowance for gratuities, is \$6.10 per hour. On or before June 1 of each year, the City will make available to the Licensee a bulletin announcing the adjusted minimum hourly wages for the upcoming year.

Licensee, and any sublicensees, subcontractors, that pay an employee the wage for

employees who receive gratuities, shall transmit to the City, in a manner provided by regulation, substantial evidence establishing both the amount that the employee received as gratuities during the relevant pay period or periods, and the fact that the employee did not return any part of those gratuities to the Licensee, sublicensees, or subcontractor. If Licensee, sublicensees, or subcontractor, is required by the Minimum Wage Law to provide substantially similar data to the Illinois Department of Labor, the City may allow compliance with this requirement by filing the same documentation with the City. The City shall utilize this data to ensure that each employee receives, in combined salary and gratuities, at least the base hourly wage required under Executive Order 2014-1.

However, the Minimum Wage is not required to be paid to categories of employees subject to subsection 4(a)(2), subsection 4(a)(3), subsection 4(d), subsection 4(e), or Section 6 of the Illinois Minimum Wage Law. Nevertheless, the Minimum Wage is required to be paid to those workers described in subsections 4(a)(2)(A) and 4(a)(2)(B) of the Illinois Minimum Wage Law.

Additionally, the Minimum Wage is not required to be paid to employees subject to a collective bargaining agreement that provides for different wages than those required by Executive Order 2014-1, if that collective bargaining agreement was in force prior to October 1, 2014 or if that collective bargaining agreement clearly and specifically waives the requirements of the order.

This Minimum Wage section does not apply if Licensee, Subcontractor, or sublicensee is a not-for-profit organization having tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code and recognized under Illinois law governing not-for-profit corporations.

#### 10.12 Policy Prohibiting Sexual Harassment (Section 2-92-612).

For purposes of this section, the following definitions shall apply:

“Contract” means any contract, purchase order, construction project, or other agreement (other than a delegate agency contract or lease of real property or collective bargaining agreement) awarded by the city and whose cost is to be paid from funds belonging to or administered by the city.

“Contractor” means the person to whom a contract is awarded.

“Sexual harassment” means any unwelcome sexual advances or requests for sexual favors or conduct of a sexual nature when (i) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment; or (ii) submission to or rejection of such conduct by an individual is used as the basis for any employment decision affecting the individual; or (iii) such conduct has the purpose or effect of substantially interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.

“Subcontractor” means any person that enters into a contract with a contractor to perform work on a contract.

As a condition of contract award, Contractor shall, as prescribed by the Commissioner,

attest by affidavit that Contractor has a written policy prohibiting sexual harassment that shall include, at a minimum, the following information: (i) the illegality of sexual harassment; (ii) the definition of sexual harassment; and (iii) the legal recourse available for victims of sexual harassment. Contractor's affidavit is included in Exhibit 8, "Sexual Harassment Policy Affidavit".

Contractor's failure to have a written policy prohibiting sexual harassment as provided above shall constitute an event of default. In the event of default, the Commissioner shall notify Contractor of such noncompliance and may, as appropriate: (i) issue Contractor an opportunity to cure consistent with the default provisions in this Agreement; (ii) terminate the contract; or (iii) take any other action consistent with the default provisions in the contract. This section shall not be construed to prohibit the City from prosecuting any person who knowingly makes a false statement of material fact to the city pursuant to Chapter 1-21 of this Code, or from availing itself of any other remedies under contract or law.

#### 10.13 Policy on Non-Disclosure of Salary History (Section 2-92-385)

For purposes of this section, the following definitions shall apply:

"Contract" means any Agreement or transaction pursuant to which a contractor (i) receives City funds in consideration for services, work or goods provided or rendered, including contracts for legal or other professional services, or (ii) pays the City money in consideration for a license, grant or concession allowing it to conduct a business on City premises, and includes any contracts not awarded or processed by the Department of Procurement Services.

"Contractor" means the person to whom a contract is awarded.

As a condition of contract award, Contractor shall attest by affidavit that Contractor has a policy that conforms to the following requirements:

- (1) Contractor shall not screen job applicants based on their wage or salary history, including by requiring that an applicant's prior wages, including benefits or other compensation, satisfy minimum or maximum criteria; or by requesting or requiring an applicant to disclose prior wages or salary, either (i) as a condition of being interviewed, (ii) as a condition of continuing to be considered for an offer of employment, (iii) as a condition of an offer of employment or an offer of compensation, or (iv) as a condition of employment; and
- (2) Contractor shall not seek an applicant's wage or salary history, including benefits or other compensation, from any current or former employer.

Contractor's affidavit is included in the Exhibit titled "Affidavit Regarding Policy on Non-Disclosure of Salary History".

If Contractor violates the above requirements, Contractor may be deemed ineligible to contract with the City; any contract, extension, or renewal thereof awarded in violation of the above requirements may be voidable at the option of the City. Provided, however, that upon a finding of a violation by Contractor, no contract shall be voided, terminated, or revoked without consideration by the Chief Procurement Officer of such action's impact on the Contractor's MBE or WBE subcontractors.



## **ARTICLE 11 GENERAL CONDITIONS**

### 11.1 Entire Agreement.

This Agreement contains all the terms, covenants, conditions and agreements between the City and Licensee relating in any manner to the use of the Licensed Space and otherwise to the subject matter of this Agreement. No prior or other agreement or understandings pertaining to these matters are valid or of any force and effect. This Agreement supersedes all prior or contemporaneous negotiations, undertakings, and agreements between the parties. No representations, inducements, understandings or anything of any nature whatsoever made, stated or represented by the City or anyone acting for or on the City's behalf, either orally or in writing, have induced Licensee to enter into this Agreement, and Licensee acknowledges, represents and warrants that Licensee has entered into this Agreement under and by virtue of Licensee's own independent investigation.

### 11.2 Counterparts.

This Agreement may be comprised of several identical counterparts and may be fully executed by the parties in separate counterparts. Each such counterpart is deemed to be an original, but all such counterparts together must constitute but one and the same Agreement.

### 11.3 Amendments.

Except as otherwise expressly provided in this Agreement, the provisions of this Agreement may be amended only by a written agreement signed by the City and Licensee. No review or approval by the Commissioner constitutes a modification of this Agreement (except to the extent that the review or approval expressly provides that it constitutes such a modification or it is apparent on its face that the review or approval, if made in writing, modifies terms or provisions of this Agreement that are within the express powers of the Commissioner under this Agreement to modify), nor excuse Licensee from compliance with the requirements of this Agreement or of any applicable laws, ordinances or regulations. Amendments must be signed by the Commissioner or any representative authorized in writing to act on the Commissioner's behalf. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform with the form of Agreement that was approved by City Council requires approval by the City Council.

### 11.4 Severability.

Whenever possible, each provision of this Agreement must be interpreted in such a manner as to be effective and valid under applicable law. However, notwithstanding anything contained in this Agreement to the contrary, if any provision of this Agreement is under any circumstance prohibited by or invalid under applicable law, the provision is severable and deemed to be ineffective, only to the extent of the prohibition or invalidity, without invalidating the remaining provisions of this Agreement or the validity of the provision in other circumstances.

11.5 Covenants in Subcontracts.

All obligations imposed on Licensee under this Agreement pertaining to the maintenance and operation of the Licensed Space and compliance with the MBE and WBE requirements in this Agreement are deemed to include a covenant by Licensee to insert appropriate provisions in all Subcontracts covering work under this Agreement and to enforce compliance of all Subcontractors with the requirements of those provisions.

11.6 Governing Law.

This agreement is deemed made in the state of Illinois and governed as to performance and interpretation in accordance with the laws of Illinois. Licensee irrevocably submits itself to the original jurisdiction of those courts located within Cook County, Illinois, with regard to any controversy arising out of, relating to, or in anyway concerning the execution or performance of this Agreement. Licensee consents to service of process on Licensee, at the option of the City, by registered or certified mail addressed to the applicable office as provided for in this Agreement, by registered or certified mail addressed to the office actually maintained by Licensee, or by personal delivery on any officer, director, or managing or general agent of Licensee. If any action is brought by Licensee against the City concerning this Agreement, the action can only be brought in those courts located within Cook County, Illinois.

11.7 Notices.

Any notices or other communications pertaining to this Agreement must be in writing and are deemed to have been given by a party if sent by nationally recognized commercial overnight courier or registered or certified mail, return receipt requested, postage prepaid and addressed to the other party. Notices are deemed given on the date of receipt if by personal service, or one day after deposit with a nationally recognized commercial overnight courier, 3 days after deposit in the U.S. mails, or otherwise upon refusal of receipt. Unless otherwise directed by Licensee in writing, all notices or communications from City to Licensee will be addressed to the person identified as the Licensee's contact person in the Licensee's Economic Disclosure Statement and Affidavit, as attached as Exhibit 8. All notices or communications from Licensee to the City must be addressed to:

Commissioner, Department of Cultural Affairs and Special Events  
City of Chicago  
78 E. Washington St., Ste 400  
Chicago, Illinois 60605

and with a copy to: Deputy Commissioner of Facilities at the same address.

If the notice or communication relates to a legal matter or the indemnification requirements, a copy must be sent to:

City of Chicago, Department of Law  
30 North LaSalle Street, Suite 1400  
Chicago, Illinois 60602  
Attn: Deputy Corporation Counsel

Either party may change its address or the individual to whom the notices are to be given by a notice given to the other party in the manner set forth above.

11.8 Successors and Assigns; No Third Party Beneficiaries.

This Agreement inures to the exclusive benefit of, and shall be binding upon, the parties and their permitted successors and assigns; nothing contained in this Section, however, constitutes approval of an assignment or other transfer by Licensee not otherwise permitted in this Agreement. Nothing in this Agreement, express or implied, is intended to confer on any other person, sole proprietorship, partnership, corporation, trust or other entity, other than the parties and their successors and assigns, any right, remedy, obligation, or liability under, or by reason of, this Agreement unless otherwise expressly agreed to by the parties in writing. No benefits, payments or considerations received by Licensee for the performance of services associated and pertinent to this Agreement must accrue, directly or indirectly, to any employees, elected or appointed officers or representatives, or to any other person or persons identified as agents of, or who are by definition an employee of, the City. Neither this Agreement nor any rights or privileges under this Agreement are an asset of Licensee or any third party claiming by or through Licensee or otherwise, in any bankruptcy, insolvency or reorganization proceeding.

11.9 Subordination.

A. The Licensee acknowledges and agrees that this License Agreement is subject to and subordinate to any existing or future agreement(s) of any kind between the City and any other person or party pertaining to the use, development, construction, operation and/or maintenance of the Cultural Center. The City reserves the right, at its sole discretion, to further develop, improve, maintain, modify and repair the Cultural Center without interference or hindrance by the Licensee.

11.10 Conflict.

In the event of any conflict between the terms and provisions of this Agreement and the terms and provisions of any Subcontract between Licensee and third parties, the terms and provisions of this Agreement govern and control.

11.11 Offset by Licensee.

Whenever in this Agreement the City is obligated to pay Licensee an amount, then the City Comptroller may elect to require Licensee to offset the amount due against Fees or other payments owed by Licensee to the City, in lieu of requiring the City to pay such amount. Licensee shall have no right to offset any amount due to City under this Agreement against amounts due to Licensee by City unless so directed in writing by the City Comptroller.

11.12 Waiver; Remedies.

No delay or forbearance on the part of any party in exercising any right, power or privilege must operate as a waiver of it, nor does any waiver of any right, power or privilege operate as a waiver of any other right, power or privilege, nor does any single or partial exercise of any right, power or privilege preclude any other or further exercise of it or of any other right, power or privilege. No waiver is effective unless made in writing

and executed by the party to be bound by it. The rights and remedies provided for in this Agreement are cumulative and are not exclusive of any rights or remedies that the parties otherwise may have at law, in equity or both, except that the City will not be liable to Licensee for any consequential damages whatsoever related to this Agreement.

11.13 Authority of Commissioner.

Unless otherwise expressly stated in this Agreement, any consents and approvals to be given by the City under this Agreement may be made and given by the Commissioner or by such other person as may be duly authorized by the City Council, unless the context clearly indicates otherwise.

11.14 No Personal Liability.

Licensee, or any sublicensee (if any), assignee or Subcontractor, must not charge any elected or appointed official, agent, or employee of the City personally or seek to hold him or her personally or contractually liable to Licensee, sublicensee, assignee, or Subcontractor for any liability or expenses of defense under any provision of this Agreement or because of any breach of its provisions or because of his or her execution, approval, or attempted execution of this Agreement.

11.15 Limitation of City's Liability.

Licensee, and Subcontractors, and sublicensees (if any) must make no claims against the City for damages, charges, additional costs or fees or any lost profits or costs incurred by reason of delays or hindrances by the City in the performance of its or their obligations under this Agreement. All of Licensee's personal property, and any personal property of any Subcontractor, or any sublicensee (if any) upon the Licensed Space or upon any other part of the Cultural Center, is present solely at the risk of Licensee, or its Subcontractors, or sublicensees (as applicable), and the City shall not be liable for any loss or damage to such personal property or theft of such personal property. The City is not liable or responsible to Licensee, and Subcontractors, and sublicensees, and Licensee waives, and will cause its Subcontractors and sublicensees (if any) to waive, to the fullest extent permitted by law, all claims against the City for any loss or damage or inconvenience to any property or person or any lost profits any or all of which may have been occasioned by or arisen out of any event or circumstance, including (i) theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition or order of governmental body or authority, or water leakage, steam, excessive heat or cold, falling plaster, or broken glass, or (ii) any act or neglect of the City or any occupants of the Cultural Center, or the Licensed Space, or (iii) repair or alteration of any part of the Cultural Center or the Licensed Space, or failure to make any such repairs, (iv) or any other thing or circumstance, whether of a like nature or a wholly different nature. If the City fails to perform any covenant or condition of this Agreement that the City is required to perform and, notwithstanding the foregoing, Licensee recovers a money judgment against the City, the judgment must be satisfied only out of credit against the Fees and other monies payable by Licensee to the City under this Agreement.

11.16 Joint and Several Liability.

If Licensee, or its successors or assigns, if any, is comprised of more than one individual or other legal entity (or a combination of them), then in that event, each and every obligation or undertaking stated in this Agreement to be fulfilled or performed by

Licensee is the joint and several obligation or undertaking of each such individual or other legal entity.

11.17 Non-Recordation.

Licensee must not record or permit to be recorded on its behalf this Agreement or a memorandum of this Agreement, in any public office.

11.18 Survival.

Any and all provisions set forth in this Agreement that, by its or their nature, would reasonably be expected to be performed after the expiration or termination of this Agreement survive and are enforceable after the expiration or termination. Any and all liabilities, actual or contingent, that have arisen in connection with this Agreement, survive any expiration or termination of this Agreement. Any express statement of survival contained in any section must not be construed to affect the survival of any other section, which must be determined under this section.

11.19 Force Majeure.

**Neither party is liable for non-performance of obligations under this Agreement due to delays or interruptions beyond their reasonable control, including delays or interruptions caused by strikes, lockouts, labor troubles, war, fire or other casualty, acts of God (“*force majeure* event”). As a condition to obtaining an extension of the period to perform its obligations under this Agreement, the party seeking such extension due to a *force majeure* event must notify the other party within 20 days after the occurrence of the *force majeure* event. The notice must specify the nature of the delay or interruption and the period of time contemplated or necessary for performance. The foregoing notwithstanding, however, in no event will Licensee be entitled to an extension of more than 60 days due to a *force majeure* event, without the express written consent of the Commissioner.**

**SIGNATURE PAGE**

SIGNED:

CITY OF CHICAGO

By: \_\_\_\_\_  
Commissioner of the Department of Cultural Affairs and Special Events

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

(LICENSEE)

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

Its: \_\_\_\_\_  
[Title]

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

[Notary]

### **EXHIBIT 1 - LICENSED SPACE**

The Licensed Space is located at \_\_\_\_\_ and consists of \_\_\_\_ location(s) with a total of approximately \_\_\_\_ square feet of Concession Space and approximately \_\_\_\_ square feet of Storage Space as further depicted in the License outline drawings attached hereto.

**EXHIBIT 2 – TERM SHEET**  
**TERM SHEET FOR CONCESSION LICENSE AGREEMENT (“AGREEMENT”)**  
**between**  
**THE CITY OF CHICAGO (“CITY”)**  
**and**  
\_\_\_\_\_ (“LICENSEE”)  
**at**  
**THE CHICAGO CCULTURAL CENTER**

*In the event of a conflict between this summary and the language contained in the Agreement, the language in the Agreement controls.*

- 1. Licensee Name:**
- 2. License Term:**
- 3. Term Extension:**
- 4. Licensed Space Location(s):**
- 5. Nature of Concession:**
- 6. Fixed Fee Annually:**
- 7. Percentage Fee:**
- 8. Days and Hours of Operation:**
- 10. Utilities:**
- 11. Delivery Location and Hours:**
- 12. Additional Space:**
- 13. DBO:**



**EXHIBIT 3 - DEVELOPMENT PLAN**  
(INCLUDING BUDGET IMPROVEMENT COSTS, AND SCHEDULED DBO  
DATES)

**EXHIBIT 4 - PRODUCTS AND PRICE LIST-**

**EXHIBIT 5 – CONTRACTOR’S PERFORMANCE AND PAYMENT BOND**

## CONTRACTOR'S PERFORMANCE & PAYMENT BOND

**Know All Men by these Presents,** That we,

Principal, hereinafter referred to as Contractor, and

, Surety

of the County of Cook and State of Illinois, are held and firmly bound unto the CITY OF CHICAGO in the penal sum of

lawful money of the United States, for the payment of which sum of money, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

**Sealed** with our seals and dated this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_

**The Condition of the Above Obligation is such,**

That whereas the above bounden Contractor has entered into a certain contract with the CITY OF CHICAGO, bearing

Contract No. \_\_\_\_\_ and Specification No. \_\_\_\_\_ all in conformity with said contract, for,

The said contract is incorporated herein by reference in its entirety, including without limitation, any and all indemnification provisions.

Now, if the said Contractor shall in all respects well and truly keep and perform the said contract on its part, in accordance with the terms and provisions of all of the Contract Documents comprising said contract, and in the time and manner therein prescribed, and further shall save, indemnify, and keep harmless the City of Chicago against all loss, damages, claims, liabilities, judgements, costs and expenses which may in anywise accrue against said City of Chicago, in consequence of the granting of said contract, or which may in anywise result therefrom, or which may result from strict liability, or which may in anywise result from any injuries to, or death of, any person, or damage to any real or personal property, arising directly or indirectly from or in connection with, work performed or to be performed under said contract by said Contractor, its Agents, Employees or Workmen, assignees, subcontractors, or anyone else, in any respect whatever, or which may result on account of any infringement of any patent by reason of the materials, machinery, devices or apparatus used in the performance of said contract, and moreover, shall pay to said City any sum or sums of money determined by the Purchasing Agent, and/or by a court of competent jurisdiction, to be due said City by reason of any failure or neglect in the performance of the requirements of said contract, wherefore the said Purchasing Agent shall have elected to suspend or cancel the same, and shall pay all claims and demands whatsoever, which may accrue to each and every materialman and subcontractor, and to each and every person who shall be employed by the said Contractor or by its assignees and subcontractors, in or about the performance of said contract, and with wages paid at prevailing wage rates if so required by said contract, and shall insure its liability to pay the compensation, and shall pay all claims and demands for compensation which may accrue to each and every person who shall be employed by them or any of them in or about the performance of said contract, or which shall accrue to the beneficiaries or dependents of any such person, under the provisions of the Workers' Compensation Act, 820 ILCS 305, as amended, and the Workers' Occupational Disease Act, 820 ILCS 310, as amended (hereinafter referred to as "Acts") then is this obligation to be null and void, otherwise to remain in full force and effect.

And it is hereby expressly understood and agreed, and made a condition hereof, that any judgement rendered against said City in any suit based upon any loss, damages, claims, liabilities, judgements, costs or expenses which may in anywise accrue against said City as a consequence of the granting of said contract, or which may in anywise result therefrom, or which may in anywise result from any injuries to, or death of, any person, or damage to any real or personal property, arising directly or indirectly from, or in connection with, work performed, or to be performed under said contract by said Contractor or its agents, employees or workmen, assignees, subcontractors, or anyone else and also any decision of the Industrial Commission of the State of Illinois, and any order of court based upon such decision, or judgement thereon, rendered against said City of Chicago in any suit or claim arising under the aforementioned Acts when notice of the pendency or arbitration proceedings or suit shall have been given said Contractor, shall be conclusive against each and all parties to this obligation, as to amount, liability and all other things pertaining thereto.

Every person furnishing material or performing labor in the performance of said contract, either as an individual, as a subcontractor, or otherwise, shall have the right to sue on this bond in the name of the City of Chicago for his use and benefit and in such suit said person as plaintiff, shall file a copy of this bond, certified by the party or parties in whose charge this bond shall be, which copy shall be, unless execution thereof be denied under oath, prima facie evidence of the execution and delivery of the original; provided, that nothing in this bond contained shall be taken to make the City of Chicago liable to any subcontractor, materialman, laborer or to any other person to any greater extent than it would have been liable prior to the enactment of the Public Construction Bond Act, 30 ILCS 550, as amended; provided further, that any person having a claim for labor and materials furnished in the performance of this contract shall have no right of action unless he shall have filed a verified notice of such claim with the Clerk of the City of Chicago within 180 days after the date of the last item of work or the furnishing of the last item of materials, and shall have furnished a copy of such verified notice to the contractor within 10 days of the filing of the notice with the City of Chicago. Such claim shall be verified and shall contain the name and address of the claimant, the business address of the claimant within the State of Illinois, if any, or if the claimant be a foreign corporation having no place of business with the State the principal place of business of said corporation, and in all cases of partnership the names and residences of each of the partners, the name of the contractor for the City of Chicago, the name of the person, firm or corporation by whom the claimant was employed or to whom such claimant furnished materials, the amount of the claim and a brief description of the public improvement for the construction or installation of which the contract is to be performed. Provided, further, that no defect in the notice herein provided for shall deprive the claimant of his right of action under the terms and provisions of this bond unless it shall affirmatively appear that such defect has prejudiced the rights of an interested party asserting the same; provided, further, that no action shall be brought until the expiration of one hundred twenty (120) days after the date of the last item of work or of the furnishing of the last item of material, except in cases where the final settlement between the City of Chicago and the Contractor shall have been made prior to the expiration of the 120 day period in which case action may be taken immediately following such final settlement, and provided, further, that no action of any kind shall be brought later than six (6) months after the acceptance by the City of Chicago of the completion of work. Any suit upon this bond shall be brought only in a circuit court of the State of Illinois in the judicial district in which the contract shall have been performed.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of any of the Contract Documents comprising said contract, or to the work to be performed thereunder, shall in anywise affect the obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of said Contract Documents or to the work.

Approved \_\_\_\_\_, 20\_\_\_\_ (Seal)

\_\_\_\_\_  
Purchasing Agent (Seal)

\_\_\_\_\_  
(Seal)

Approved as to form and legality: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Assistant Corporation Counsel (Seal)

PRINCIPAL  
IF CORPORATION

STATE OF ILLINOIS, }  
COUNTY OF COOK, } ss.

I, \_\_\_\_\_, a Notary Public in and for the County and State  
aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_ President and

\_\_\_\_\_ Secretary of the \_\_\_\_\_

who are personally known to me to be the same persons whose names are subscribed in the foregoing instrument as

such \_\_\_\_\_ President and \_\_\_\_\_ Secretary, appeared  
before me this day in person and acknowledged that they signed, sealed and delivered the said instrument of writing as

their free and voluntary act, and as the free and voluntary act of the said \_\_\_\_\_  
for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
*Notary Public*

SURETY, IF CORPORATE

STATE OF ILLINOIS, }  
COUNTY OF COOK, } ss.

I, \_\_\_\_\_, a Notary Public in and for the County and State  
aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_

\_\_\_\_\_ of the \_\_\_\_\_ who \_\_\_\_\_ personally known

to be the same person \_\_\_\_\_ whose name \_\_\_\_\_ subscribed in the foregoing instrument as such \_\_\_\_\_

\_\_\_\_\_, appeared before me this day in person and acknowledged that \_\_\_\_\_

signed, sealed and delivered the said instrument of writing as \_\_\_\_\_ free and voluntary act, and as the free

and voluntary act of the said \_\_\_\_\_

for the uses and purposes therein set forth, and caused the corporate seal of said Company to be thereto attached.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
*Notary Public*

PRINCIPAL  
IF INDIVIDUAL

STATE OF ILLINOIS, }  
COUNTY OF COOK, } ss.

I, \_\_\_\_\_, a Notary Public in and for the County and State  
aforesaid, DO HEREBY CERTIFY that \_\_\_\_\_

who \_\_\_\_\_ personally known to me to be the same persons whose name \_\_\_\_\_ subscribed in the foregoing

instrument, appeared before me this day in person and acknowledged that \_\_\_\_\_ he \_\_\_\_\_ signed, sealed and delivered the

said instrument of writing as \_\_\_\_\_ free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
*Notary Public*

**EXHIBIT 6 - INSURANCE REQUIREMENTS AND INSURANCE  
CERTIFICATE**

**EXHIBIT 7 - MBE/WBE SPECIAL CONDITIONS, RELATED FORMS, AND  
COMPLIANCE PLAN**



**EXHIBIT 8 – ECONOMIC DISCLOSURE STATEMENT**

**EXHIBIT 9 – SEXUAL HARASSMENT POLICY AFFIDAVIT (Section 2-92-612)**

The policy prohibiting sexual harassment as described in Section 2-92-612 of the Municipal Code of Chicago ("MCC") is applicable to contracts paid from funds belonging to or administered by the City.

In accordance with requirements set forth in Section 2-92-612 of the MCC, Contractor hereby attests that Contractor has a written policy prohibiting sexual harassment that includes, at a minimum, the following information:

- (i) the illegality of sexual harassment;
- (ii) the definition of sexual harassment; and
- (iii) the legal recourse available for victims of sexual harassment.

Contractor understands that it may be required to produce records to the Commissioner to verify the information provided.

Under penalty of perjury the person signing below: (1) warrants that he/she is authorized to execute this Affidavit on behalf of Contractor, and (2) warrants that all certifications and statements contained in this Affidavit are true, accurate, and complete as of the date of execution.

Name of Contractor: \_\_\_\_\_

(Print or Type)

Signature of Authorized Officer: \_\_\_\_\_

(Signature)

Title of Signatory: \_\_\_\_\_

(Print or Type)

State of \_\_\_\_\_

County of \_\_\_\_\_

Signed and sworn (or affirmed) to before me on \_\_\_\_\_ (date) by

\_\_\_\_\_ (name/s of person/s making statement).

\_\_\_\_\_

(Signature of Notary Public)

(Seal)

**EXHIBIT 10 – CULTURAL CENTER CONCESSION ARTWORK STANDARDS**