

REQUEST FOR QUALIFICATIONS ("RFQ")  
FOR OPERATION OF CONCESSIONS ON THE  
CHICAGO RIVERWALK COMMUNITY MARKETPLACE  
SPECIFICATION 1232778

REQUIRED FOR USE BY:

CITY OF CHICAGO  
DEPARTMENT OF ASSETS, INFORMATION & SERVICES



ALL QUALIFICATIONS MUST BE EMAILED TO [CHICAGORIVREWALK@CITYOFCHICAGO.ORG](mailto:CHICAGORIVREWALK@CITYOFCHICAGO.ORG) AND  
RECEIVED BY 4:00 P.M. CENTRAL TIME

**November 8, 2021**

QUALIFICATIONS SUBMITTED IN RESPONSE TO THIS RFQ WILL BE ACCEPTED UNTIL: 4:00 P.M. CDT.  
LATE QUALIFICATIONS MAY NOT BE CONSIDERED FOR SELECTION.

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LORI LIGHTFOOT  
MAYOR

DAVID J. REYNOLDS, P.E.  
COMMISSIONER

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**Request for Qualifications (RFQ)**  
**For the Operation of Concessions on the Chicago Riverwalk Community Marketplace**

**I. General Invitation**

The City of Chicago (“City”) Department of Assets, Information & Services (“AIS” or “Department”) hereby issues this Request for Qualifications (“RFQ”), inviting the submission of qualifications from food and beverage, retail, arts and other businesses with the qualifications and expertise necessary to operate a concession at the Chicago Riverwalk Community Marketplace beginning as early as 2022. This procurement is specifically looking to provide opportunities to businesses offering concession services reflective of the cultural diversity and neighborhoods of the City of Chicago on the Chicago Riverwalk. Minority and Women owned businesses are strongly encouraged to respond. For the purposes of this RFQ, “Commissioner” refers to the Commissioner of AIS. “Respondents” or “Proposers” is defined as the entity who submits their response to this RFQ. The documents submitted will be referred to as “Qualifications.” Respondents deemed qualified will have the opportunity to enter into a Master Concession License Agreement (“MCLA”) with the City of Chicago for a three-year term. Two (2) one (1) year extensions are possible. The length of the term will not exceed sixty (60) months. The MCLA will set forth the terms and conditions of use of the Chicago Riverwalk. Respondents must enter into a MCLA and be approved in order to be eligible to respond to future Requests for Proposals (“RFP”) from the Department. Responses to future RFPs will be reviewed and scored by an Evaluation Committee based upon the criteria presented in the future RFP. Selected Respondents for individual RFPs will then be issued a Use Agreement “UA” to operate a concession on the Chicago Riverwalk for the term as outlined in the RFP. The UA will incorporate the terms of the MCLA by reference. The City currently intends to establish a pool of qualified operators under the MCLA offering a variety of concessions showcasing the best of the City of Chicago on the Chicago Riverwalk. The City is currently looking for Respondents interested in operating in the Chicago Riverwalk Community Marketplace. The sale of alcohol is not permitted in the Community Marketplace. The Riverwalk Community Marketplace map of the site and site description and diagram of available kiosks are shown in Exhibit 1 to this RFQ.

To be considered eligible to participate in future RFP’s, please send a complete set of Qualifications and a redacted set of Qualifications in PDF format. Redacted must be clearly labeled “Redacted Qualifications.” Submittals can be emailed to [ChicagoRiverwalk@cityofchicago.org](mailto:ChicagoRiverwalk@cityofchicago.org) with “Qualifications to Operate Concessions in the Chicago Riverwalk Community Marketplace” in the subject line.

## **II. Chicago Riverwalk Overview**

### **2.1 Project Background**

The Riverwalk is a 1.25 mile pedestrian path which runs parallel to Wacker Drive along the South Bank of the Main Branch of the Chicago River from Lake Street to Lake Shore Drive. Past procurements have resulted in concessions contracts. The Department envisions an additional mix of food, non-alcoholic beverage, and retail facilities, in the “Chicago Riverwalk Community Marketplace.” This section located between Michigan and Wabash has been transformed into a vibrant area with the intent to feature local, Chicago owned businesses reflective of the diverse and culturally significant neighborhoods of the City of Chicago. The intention of this RFQ is to provide downtown residents, tourists and visitors a sample or “taste” of established community businesses operating in our City’s neighborhoods which would encourage them to visit these brick and mortar locations in their main location community. Businesses with experienced and well-qualified operators or teams are also welcome to submit.

The Riverwalk is a short walking distance from Millennium Park and the Theater District and near Navy Pier. Neighboring businesses include several hotels and office buildings. It is in the City's central business district and adjacent to the vibrant River North entertainment district.

The Department assumed responsibility for the concession program in 2015. The concessions program has improved every year and participating vendors’ revenues have increased significantly each year of the program. The success of the program has shown the Riverwalk to be a popular destination for downtown.

Licensee agreements resulting from a 2017 RFP began operations during the 2018 Season. The Department is issuing this RFQ to enhance the existing concession program and attract minority and women owned businesses that reflect the cultural diversity of the neighborhoods of the City of Chicago for the Community Marketplace. Qualified vendors would be eligible to respond to future RFPs to activate the Community Marketplace for a length of time to be determined. Additional Riverwalk sites not described in this RFQ may become available in the future.

In keeping with vision for the Riverwalk development, the Department hereby requests Qualifications from food and non-alcoholic beverage, retail, cultural and artistic businesses for operation in the Chicago Riverwalk Community Marketplace beginning as early as May 2022. A future RFP will be issued to Respondents selected pursuant to this RFQ. The term length will be outlined in the future RFP’s. Multiple RFPs are anticipated throughout the three-year term of the MCLA for the summer season.

Respondents must clearly demonstrate relevant experience in the operation and management of concessions and carefully delineate their experience operating in the current Chicago neighborhood location or locations. The primary goal of this RFQ is to highlight existing vendors in the City’s culturally diverse communities. Respondents who have existing brick and mortar locations that are established and want to provide downtown workers and visitors to Chicago with a sample or “taste” of what their neighborhood venues offer are strongly encouraged to

respond. Experienced and well-qualified operators or teams are encouraged to submit. Businesses that were adversely impacted by the pandemic and have experience, expertise and qualifications operating are also encouraged to apply.

## **2.2 Concession Opportunity Locations**

Example of possible concessions include but are not limited to; food and non-alcoholic beverage; retail, particularly of a cultural or artistic nature, or any other type of family-friendly concessions which reflects the cultural diversity of the City of Chicago. The Department encourages Respondents to propose other ideas to enhance the use and enjoyment of the Riverwalk and Chicago River.

The Chicago Riverwalk Community Marketplace has been identified for the 2022 seasons. Additional locations not specifically listed below may become available and described in future RFP's. The City reserves the right to provide additional locations for concessions operations during the term of the MCLA.

Opportunities for the operations of concessions are available within kiosks to be provided by the City. The City reserves the right to issue future RFQs.

### **The Chicago Riverwalk Community Marketplace**

#### **Address 45 East Riverwalk South- (West of Michigan Avenue)**

This section of the Riverwalk has been available since 2019. In order to expand the concessions program and showcase local Chicago owned businesses which highlight the City's rich culture, the Department completed significant infrastructure improvements to expand the pedestrian walkway and allow local businesses to showcase their craft, in pop-up venues. Seven kiosks have been activated since 2019 establishing this corridor as a Riverwalk destination. Each kiosk will be considered a "Location."

Terms for operation from the corridor kiosks, shown in **Exhibit 1 will be outlined in future RFPs**. The Department would like to have the kiosks operating 7 days a week. However, selected Respondents can agree unanimously to less days per week provided all vendors are opened at simultaneously and consistently.

## **2.3 Riverwalk Revenues from Past and Existing Concessionaires**

Revenues from the Community Marketplace were not reported in the 2019 Season. Vendors were delayed in opening because the Marketplace was under construction. 2020 revenues were greatly impacted by the global pandemic. 2021 revenues through September have been impacted by the lack of international tourism and the number of people who continue to work from home and not return to downtown offices. The Department is anticipating improved revenues during the 2022 Season. For example, between June and August 31, Colores Mexicanos has generate more than \$100,000 in revenues and Chiya Chia nearly \$150,000. Both vendors have operated seven days

per week. Peach's on the River and Neighborly operated on a reduced schedule which greatly impacted their revenues.

### **III. General Information and Guidelines**

Respondents who can demonstrate qualifications, experience and expertise in the operations of food, beverage and retail operations that would also be able to provide concessions that represent the rich cultural diversity or have existing operations within the communities of the City of Chicago are encouraged to respond to this RFQ. Respondents should explain how their services will encourage people to visit the Riverwalk and how their concession is reflective of their neighborhood or cultural identity.

#### **3.1 Schedule**

The City has adopted the following schedule:

- |                           |  |
|---------------------------|--|
| ➤ <b>October 4, 2021</b>  | <b>Issuance of the RFQ</b>                         |
| ➤ <b>October 12, 2021</b> | <b>BACP Webinar</b>                                |
| ➤ <b>October 13, 2021</b> | <b>Pre-Submittal Meeting</b>                       |
| ➤ <b>October 15, 2021</b> | <b>Deadline for written questions by 4:00 p.m.</b> |
| ➤ <b>October 20, 2021</b> | <b>Addenda publish</b>                             |
| ➤ <b>November 8, 2021</b> | <b>Due Date for Qualifications @ 4:00 p.m. CST</b> |

***Subsequent RFP timeline is dependent the Evaluation Committee review and contracting process of Respondents deemed "Qualified."***

#### **3.2 Qualifications Due Date and Time**

For consideration, email a pdf of Qualifications no later than **4:00 P.M. CST on November 8, 2021 (the "Due Date")** to **[chicagoriverwalk@cityofchicago.org](mailto:chicagoriverwalk@cityofchicago.org)** . Late submittals may not be considered at the Commissioner's sole option.

#### **3.3 Qualifications Submittal Delivery**

Email a pdf of your Qualifications to **[chicagoriverwalk@cityofchicago.org](mailto:chicagoriverwalk@cityofchicago.org)**

#### **3.4 Transparency**

Consistent with the City's practice of making available all information submitted in response to a public procurement, all submittals, any information and documentation contained therein, any additional information or documentation submitted to the City as part of this solicitation, and any information or documentation presented to the City as part of negotiation of a contract or other agreement may be made publicly available through the City's Internet website, the Chicago Riverwalk website, or upon request.

Respondents may designate those portions of the Qualifications Submittal which contain trade secrets or other proprietary data ("Data") that Respondents desire remain confidential.

To designate portions of the Qualifications submittal as confidential, Respondent must:

1. Mark the cover page as follows: **"This Qualifications Submittal includes trade secrets or other proprietary data."**
2. Mark each sheet or Data to be restricted with the following legend: **"Confidential: Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this RFQ."**
3. Provide a clearly marked "redacted copy" of the entire Qualifications or submission in PDF format for posting on the City's website, with a separate cover letter identifying the basis for claiming each item of redacted information as exempt from disclosure under the Illinois Freedom of Information Act. Respondent is responsible for properly and adequately redacting any Data which Respondent desires remain confidential. The cover must indicate that it is a redacted copy, and if entire pages or sections are removed, they must be represented by a page indicating that the page or section has been redacted. Respondent must also submit an explanation as to why information is being redacted. Failure to provide a redacted copy PDF may result in the posting of an un-redacted copy.

Indiscriminate labeling of material as "Confidential" may be grounds for deeming a Submittal as non-responsive.

All Qualifications submitted to the City are subject to the Freedom of Information Act. The City will make the final determination as to whether information, even if marked "Confidential," will be disclosed pursuant to a request under the Freedom of Information Act or valid subpoena. Respondent agrees not to pursue any cause of action against the City with regard to disclosure of information. If a "redacted copy" is not provided, the City may disclose the original submittal.

### **3.5 Pre-Submittal Seminar**

The Department will conduct a Pre-Submittal seminar in order to provide an opportunity for potential Respondents to ask questions about the process and AIS encourages vendors to respond. You can register for the Pre-Submittal Seminar at [chicagoriverwalk@cityofchicago.org](mailto:chicagoriverwalk@cityofchicago.org). The Seminar will be **October 13, 2021, at 2:00 p.m.** The Pre-Submittal seminar will be held via a conference call. **Call: 605-313-4477 Code: 124315** In addition to the Pre-submittal seminar, BACP is hosting an online webinar to describe the program, explain the process and respond to questions. Interested parties can register at [www.chicago.gov/businesseducation](http://www.chicago.gov/businesseducation).

All interested parties are welcome to join the call for the Pre-submittal seminar. City representatives will describe the program and answer questions that were emailed prior to and during the Pre-submittal meeting. Respondents are to rely solely upon this RFQ and any subsequent addenda in preparing their proposals; statements made at the Pre-Proposal seminar are not binding upon the City. The City also strongly encourages Respondents to visit the Riverwalk prior to joining the Pre-Submittal seminar call.



#### Interpretation and Questions Regarding the RFQ

Joining the Pre-Submittal seminar call is not mandatory; however, it is highly encouraged. Should you require an interpretation or clarification of the RFQ outside of the Pre-Submittal seminar call, you must submit your question(s) via e-mail to:

Attention: Chicago Riverwalk Community Marketplace

E-mail: [chicagoriverwalk@cityofchicago.org](mailto:chicagoriverwalk@cityofchicago.org)

E-mailed questions and questions asked during the Pre-Submittal Seminar call will be accepted and must be submitted prior to **4:00 P.M. CDT October 15, 2021**. Written answers to the questions, as well as any clarifications, interpretations, or changes to the RFQ, will be provided in one or more addenda to the RFQ. Addenda will be transmitted directly to Respondents that have registered as holders of this RFQ. Register by sending contact information to: [chicagoriverwalk@cityofchicago.org](mailto:chicagoriverwalk@cityofchicago.org). Please be advised that you are not to rely on any explanation, clarification, interpretation, approval or answer made or given in any manner by any representative of the City other than a written addendum to this RFQ. You must register in order to receive answers to written questions and any addenda that may be submitted for the RFQ.

#### **3.6 City's Right to Cancel, Reject or Reissue this RFQ**

The City reserves the right to reject any or all Proposals, to invite new proposals or take such other course of action as the City deems appropriate at the City's sole and absolute discretion. More specifically, the City reserves the right to:

- Waive any informality in any Proposal or proposing procedure.
- Reject any portion(s) of a Proposal.
- Reissue the RFQ with or without modification.
- Modify the offered space.
- Select multiple Proposals.
- Conduct simultaneous, competitive negotiations with two or more Respondents.
- Negotiate all Proposal elements.

Any one or more of the following causes may be considered sufficient for rejection of a Respondent's Proposal regardless of Respondent's qualifications with respect to the other Evaluation Criteria set forth in Section E below:

- Evidence of collusion among Respondents.
- Non-responsiveness as determined by the City in its sole judgment and discretion.
- Default or arrearage on any contract or obligation with the City or other government entity, including debt contract, as surety or otherwise.
- Submission of a Proposal that is incomplete, conditional, ambiguous, obscure or containing alterations or irregularities of any kind.
- Submission of a concession, attraction or programming concept determined by the City, in its sole discretion and judgment, to be inconsistent with the goals and objectives of the Riverwalk program.

- Evidence of improper lobbying efforts toward members of City Council and/or officers or employees of the City.
- Failure to comply with the terms and conditions of this RFQ.

This list of causes is not exhaustive, and the City reserves the right to reject any Submittal in the City's sole and absolute discretion.

The City reserves the right to issue future RFQs for any reason.

### **3.7 Consent to Review and Verification**

The City's determination of a Respondents' responsibility, responsiveness and qualification will be based on information provided by the Respondent in its Qualification Submittal, including its Economic Disclosure Statement and Affidavit ("EDS") (if and as requested by the City), interviews (if any) and other sources that the City deems pertinent to the assessment and verification of the information provided by the Respondent. Past compliance with Municipal Code, rules and regulations of the Departments of Buildings, Health, Business Affairs and Consumer Protection and any other applicable City department will be reviewed. A contract will not be awarded until the City has completed such assessment and verification. By submitting its Qualifications Submittal, Respondent agrees to permit and cooperate with any such assessment and verification.

### **3.8 Interviews of Respondents**

The City may, at its discretion, schedule one or more interviews with any Respondent to discuss specific issues related to a Qualifications Submittal. The City will determine the dates and times of such interviews and Respondents will be given reasonable notice.

### **3.9 Costs of Submittals**

All costs incurred by Respondents in preparation of its Qualifications Submittal and participation in the procurement process through the award of a contract, if any, will be borne by the Respondents. The City is not responsible for any Respondent costs associated with this RFQ.

### **3.10 Ownership of Submittals**

All Proposals and any supplementary material that may be provided by Respondents or requested by the City will become and remain the property of the City. Proposals are subject to the Freedom of Information Act.

### **3.11 Award and Execution of a Contract**

A MCLA may be executed with Respondents who are selected pursuant to this RFQ. The City intends to send RFPs to Respondents scoring Qualified or above for future Use Agreements for available sites. Respondents will be selected based upon their Proposal submittals for future RFPs, which in the City's sole judgment provide the best overall Proposal for a particular location for the available term.

### **3.12 Disclaimer**

The information contained in this RFQ, including any attachments, exhibits, appendices and addenda that may be issued, is provided to assist prospective respondents in the preparation of Proposals. Respondents should satisfy themselves by personal investigation or such other means

as may be necessary with respect to the conditions affecting this opportunity. The information provided in this RFQ has been obtained from sources thought to be reliable, but the City and its elected officials, officers, employees, agents and contractors are not liable for the accuracy of the information or its use by prospective respondents.

### **3.13 Title VI Solicitation Notice**

The City, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all Proposers that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

## **IV. KEY BUSINESS TERMS AND GENERAL CONDITIONS**

### **4.1 Roles of the City of Chicago**

As stated at the outset of this RFQ, the City intends to establish a pool of Concession Operators eligible to respond to future RFPs to be awarded a USE AGREEMENT based upon the needs of the City and available space in the future. Proposals submitted in response to any future RFP will be reviewed by an Evaluation Committee. Future proposals viewed favorably by the Evaluation Committee will be recommended to the Commissioner and Budget Director for the operation of concessions at specific Locations for Use Agreement. The selected proposer(s) (“Licensee(s)”) will assume complete responsibility for the development and operations of their concession(s) on the Riverwalk.

The Department will oversee Riverwalk activities on behalf of the City and coordinate on behalf of the Licensee(s) with other City departments on matters from regulatory compliance and permitting to programming events and other activities.

#### **4.2 Term of Concession Operations**

The term of the MCLA (“Term of Service”) will be thirty-six months with two possible extensions of twelve months. The MCLA term will not exceed sixty months. Possible term lengths for subsequent Use Agreements would range between short term pop-ups for up to a maximum of six months or 180 days, dependent upon the term outlined in the RFP. The ideal Use Agreement length is six months (180 days) which is consistent with Riverwalk Season however, shorter seasonal activations may also be considered. Extensions can be offered for additional time at the City’s sole option. The term will not exceed 60 months which includes possible extension of two twelve-month extensions to be taken at the City's sole option.

The ideal concession operations season is between May through October 31. The Department may elect to issue RFPs for other time periods, for example: the holiday season, spring flower festival or other shorter term pop-up concessions at the City’s sole option.

#### **4.3 Compensation**

In consideration of the rights and privileges to be granted to the selected Respondent by the City, the selected Respondent will pay a fee (“Concession License Fee”) to the City in accordance with the terms and conditions of the Use Agreement and clearly defined in the future RFP’s. The Concession License Fee means all amounts payable by selected Respondent as set forth in the Use Agreement, to be paid in monthly installments for the term of the Use Agreement.

The Concession License Fee varies depending on the kiosk size. For the 2021 Season vendors were charged respectively:

Kiosk A and C:

May	\$0.00
June	\$500.00
July	\$500.00
August	\$500.00
September	\$500.00
October	\$250.00
November	\$0.00
December	\$0.00

Kiosk B:

May	\$0.00
June	\$750.00
July	\$750.00
August	\$750.00
September	\$750.00
October	\$500.00

The monthly license fees should be in amount to cover the costs of the common area maintenance of the “Community Corridor” which will be performed by the City of Chicago. The fee for the term will be clearly stated in the future RFP’s and defined in the Use Agreement to reflect the level of

service required to maintain the common areas. Vendors can propose alternate amounts in their submittal to future RFPs. The monthly fee is for each kiosk.

#### **4.4 Operations and Maintenance**

##### **4.4.1 Operating Hours**

Consistent with City public park hours and Section 10-36-145 of the Municipal Code of the City of Chicago, the City expects the Riverwalk to be open to the public from 6 am to 11 pm, 7 days a week, 365 days a year, with seasonally appropriate concession operating hours. Licensees will be required to commit to a specific schedule of operating hours. Operators are required to be open consistent with the term outlined in the Use Agreement. Existing Riverwalk concessions vendors typically operate May through October; however, vendors are increasing the length of the season by starting as early as April and continuing through November, dates are approved by the Commissioner.

##### **4.4.2 Operational Requirements**

Operational requirements for the location will include, but not be limited to the following:

The City expects that concessions will be offered each operation day as outlined in the Use Agreement and as described in the RFP. There is the understanding the Operator may need time to set up operations which will be negotiated during the RFP phase of the procurement. Hours of operations are specific to the concession being offered and will be negotiated during the RFP phase of the procurement.

The City will provide landscaping maintenance, janitorial services, power washing, clean-up in the event of flooding, snow removal, and trash collection in the common areas.

The Licensee(s) will maintain their Location on the Riverwalk, all equipment and other personal property neat, clean, in good order and good operating condition. The Licensee will ensure that the facility is, always, clean, attractive, and sanitary. The Licensee is expected to secure their site or kiosk and items contained within the site or kiosk. Licensee is expected to meet all Department of Health and Department of Business Affairs and Consumer Protection codes, rules, regulations and all other Laws and requirements.

Trash collection and disposal will also be at a designated location established by the City. The City has high standards for its public spaces and wants to ensure good working order of the included amenities. In order for the Riverwalk to be appealing to the public, it must be clean and safe.

Proposals that include entertainment to activate the space will be considered favorably. However, performances must be completed by 8:30 P.M. in accordance with Chicago Municipal Code section 4-60-074: "No Riverwalk Venue licensee shall broadcast music, announcements or other disruptive sounds or offer live music or entertainment between 8:30 P.M and 11:00 A.M."

Riverwalk policy is for live performances with amplified sound are completed by 8:00 P.M.

#### **4.4.3 Storage and Delivery**

On-site storage will be limited, although opportunities for the development of storage and back-of-the-house space along the Riverwalk will be discussed during negotiations with selected Respondents. Loading and unloading of materials and equipment between Michigan Avenue and Wabash Avenue is accessible via Lower Wacker Drive and adjacent to the both the 35 East Riverwalk South and 45 East Riverwalk south.

#### **4.4.4 Parking**

Customer and employee parking is not available but there are many paid parking structures in the area.

#### **4.4.5 City Reporting Requirements**

Licensee must comply with City reporting requirements, including but not limited to: estimated customers (both paying and non-paying), sales and revenue reports, and average retail sales by square feet. Monthly reports requesting other information may be requested by the City.

### **4.5 Utilities**

The City will provide connections to power and wi-fi. Other connections cannot be guaranteed. Cost for utilities will be included in the monthly license fee. The City makes no promise on the availability of utilities at any location within the Riverwalk.

### **4.6 Compliance with Public Accommodation Laws**

The Licensee must comply in all respects with applicable building codes, laws and regulations regarding non-discrimination in public accommodations and commercial facilities including, without limitation, the requirements of the Civil Rights Act of 1964 ("Civil Rights Act") and the Americans with Disabilities Act of 1990 ("ADA"), as amended, and all regulations, Executive Orders, and federal guidance issued to implement the Civil Rights Act and the ADA.

An eight-foot wide, ADA-accessible, continuous walkway must be maintained for the entire length of the Riverwalk at all times that the Riverwalk is open to the public except as authorized by the Commissioner. Additionally, the Licensee's area of business must be ADA accessible.

### **4.7 Insurance Requirements**

The MCLA will require that the Licensee maintain workers' compensation, commercial liability (including product liability), automobile liability and builder's risk insurance throughout the term of the MCLA. Coverage must be sufficient and appropriate for intended purposes of Riverwalk; the City, in its sole discretion, will determine the minimum levels of coverage required. All insurance policies will name the City as an additional insured on a primary non-contributory basis. An example of a Certificate of Insurance is available as Exhibit 5.

### **4.8 Conformity with Laws**

#### **4.8.1 Prohibition on Certain Contributions- Mayoral Executive Order No. 2011-4**

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 Contractor, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

Contractor represents and warrants that since the date of public advertisement of the specification, request for proposals, request for qualifications or request for information (or any combination of those requests) or, if not competitively procured, from the date the City approached the Contractor or the date the Contractor 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.

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

For purposes of this provision:

"Other Contract" means any agreement entered into between the Contractor 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.

#### **4.8.2 False Statements**

(a) 1-21-010 False Statements

Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly falsifies any statement of material fact made in connection with an application, report, affidavit, oath, or attestation, including a statement of material fact made in connection with a bid, proposal, qualifications, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees.

The penalties imposed by this section shall be in addition to any other penalty provided for in the municipal code. (Added Coun. J. 12-15-04, p. 39915, § 1)

(b) 1-21-020 Aiding and Abetting.

Any person who aids, abets, incites, compels or coerces the doing of any act prohibited by this chapter shall be liable to the city for the same penalties for the violation. (Added Coun. J. 12-15-04, p. 39915, § 1)

(c) 1-21-030 Enforcement.

In addition to any other means authorized by law, the corporation counsel may enforce this chapter by instituting an action with the department of administrative hearings. (Added Coun. J. 12-15-04, p. 39915, § 1)

#### **4.8.3 Inspector General**

It is the duty of any bidder, proposer or Contractor, all Subcontractors, every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners and employees of any bidder, proposer, Contractor, Subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing, if applicable, undertaken pursuant to MCC Ch. 2-56. Contractor understands and will abide by all provisions of MCC Ch. 2-56.



All subcontracts must inform Subcontractors of this provision and require understanding and compliance with them.

#### **4.8.4 Duty to Report Corrupt Activity**

Pursuant to MCC 2-156-018, it is the duty of the Contractor to report to the Inspector General, directly and without undue delay, any and all information concerning conduct which it knows to involve corrupt activity. "Corrupt activity" means any conduct set forth in Subparagraph (a)(1), (2) or (3) of Section 1-23-020 of the MCC. Knowing failure to make such a report will be an event of default under this Contract. Reports may be made to the Inspector General's toll-free hotline, 866-IG-TIPLINE (866-448-4754).

#### **4.8.5 Multi Project Labor Agreement (PLA)**

The City has entered into the PLA with various trades regarding projects involving construction, demolition, maintenance, rehabilitation, and/or renovation work, as described in the PLA, a copy of which may be found on the City's website at: <http://www.cityofchicago.org/dam/city/depts/dps/RulesRegulations/Multi-ProjectLaborAgreement-PLAandSignatoryUnions.pdf>.

To the extent that any work by a Licensee or its contractors involves a project that is subject to the PLA, the Licensee must acknowledge familiarity with the requirements of the PLA and its applicability to Work under any agreement resulting from this RFQ and shall comply in all respects with the PLA.

#### **4.8.6 Minimum Wage**

All Licensees will be expected to pay their employees performing work on City property the minimum wage. For more information see: <http://chicityclerk.com/council/exec.php>.

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## **V. QUALIFICATIONS SUBMITTAL REQUIREMENTS**

### **5.1 Overview**

Submittals must be electronic and submitted via email in PDF format. The Qualifications must include the following items organized and clearly labeled in the order stated below:

1. Cover Letter
2. Application Form (Exhibit 2)
  - a. Qualifications and Experience Statement- Business Description
  - b. Concession to be operated on the Riverwalk
3. Three (3) Professional References (Exhibit 3)
4. Conflict of Interest Statement
5. Executed Proposal Affidavit (Exhibit 4)
6. Legal Action for past five (5) years
7. EDS Certificate(s) of Filing
8. Financial Statements for the past three (3) years
9. Statement regarding compliance with Insurance Requirements set forth in future RFPs, an example of previous requirements can be reviewed in Exhibit 5.

#### **5.1.1 Cover Letter**

Cover letter should include:

- A. Identify Respondent's legal name, its headquarters address, its principal place of business, its legal form (i.e., corporation, joint venture, partnership, etc.), the names of its principals or partners, and whether Respondent is authorized to do business in the State of Illinois. If Respondent is a business entity comprised of more than one (1) legal entity, Respondent must identify all legal entities so comprising Respondent; it must identify each entity's respective ownership percentage of Respondent; and Respondent must summarize the role, degree of involvement and experience of each such separate entity; if the Respondent is a new team being assembled for the purpose of responding to this RFQ, describe how the various members of the team will coordinate to achieve the City's goals for the Riverwalk
- B. Indicate the name, mailing address, email address, and telephone number(s) of the principal contact for oral presentation or negotiations
- C. Explain its understanding of the City's intent and objectives and its approach to achieving those objectives
- D. Provide a brief summary of the qualifications, experience and background of the team and its committed Key Personnel

- E. Statement of understanding of the terms and conditions of the Master Concession License Agreement ("MCLA") Exhibit 6 and Use Agreement ("UA") Exhibit 7. The City will not accept or entertain any exceptions or objections to the UA or any time after Respondents' Qualifications has been submitted except and only to the extent the City subsequently makes a material change to a substantive provision of the MCLA and UA
- F. Describe how any incomplete projects and/or contractual commitments to other clients will affect your ability to deliver services, capacity to perform within City's timeline and affect dedicated resources committed to the City's Services. Respondent should provide a summary of current and future projects and commitments and include project completion dates
- G. If applicable, Respondent must provide a statement and information regarding conflicts of interest as described in the Evaluation Criteria
- H. Acknowledgment of receipt of all Addenda issued by City, if any; and
- I. Include a statement of "No objection" to any of the items in the License Agreement

**5.1.2 Application Form- Qualifications and Experience Statement- Business Description (Exhibit 2)**

The Qualifications and Experience Statement summary must also address the following information:

- A. Summarize Respondent's past qualifications and specialized experience in the operation of existing business.
- B. Describe of experience operating a concession.
- C. Describe experience in and list all Chicago Neighborhood festivals and street fairs and the corresponding years of participation in each.
- D. Explain understanding of acquiring and meeting all Department of Health certifications and requirements.
- E. Any other experience or qualifications appropriate to achieve the goals and objectives the Chicago Riverwalk concessions program.
- F. Explain overall strategy and methodology for successfully implementing the Concession for the City of Chicago.

- G. Describe your firm’s proposed methods and techniques for assessing and measuring customer needs, wants, preferences, and degree of satisfaction.
- H. Describe personnel, applicable technologies, and other resources available for implementing the Services; providing in detail, whether resources are proprietary or outsourced; and
- I. Explain and describe existing establishments including photos and menus; and

Identify participants in Respondent’s “Team.” For example, if Respondent is a business entity that is comprised of more than one legal participant (e.g., Respondent is a general partnership, joint venture, etc.), then Respondent must identify or cause to be identified all participants involved, its respective ownership percentages, and summarize the role, degree of involvement, and experience of each participant separately.

Provide a chronological history of all mergers and/or acquisitions involving the Respondent team members, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

If Respondent is a joint venture or partnership, attach a copy of the joint venture or partnership agreement signed by an authorized officer of each partner. Each partner must execute:

Separate Economic Disclosure Statement and Affidavit (“EDS”) completed by each partner and one in the name of the joint venture or partnership.

Insurance certificate should be in the name of the joint venture or partnership business entity.

### **5.1.3. Application Form - Concession Concept for the Riverwalk**

This section should include, but is not limited to, the following:

- A. Detailed description and explanation of concession or services to be offered on the Riverwalk.
- B. Proposed Menu and Pricing.
- C. Explanation of how Concession is reflective of their neighborhood or the cultural diversity of the City of Chicago.
- D. Description of how the concession will convince Riverwalk vendors to visit or patronize the neighborhood location and experience the entire community.

- E. Explanation of how the concession concept provides a unique Chicago experience on the Chicago River.
- F. Description of flexibility to include new and interesting menu items to provide a variety of offerings.
- G. Explanation of how the concession complies with Guiding Principles in Attachment 1; and
- H. Reference should be made to meeting challenges and conditions at the Riverwalk or similar to those at the Riverwalk, e.g. seasonal operations, limited access routes, temporary facilities, etc.

#### **5.1.4 Company References/Client Profile Information (Exhibit 3)**

Respondent must provide at least 3 references from business associates, community organizations, or other professions references familiar with the Respondent's operations and qualifications. Experience will not be considered unless complete reference data is provided.

At a minimum, the following information should be included for each client reference:

- Client name, address, contact person name, telephone and email address
- Description of Concession provided, similar to the Concession outlined in Exhibit 1 of this RFP
- The location of the Concession
- Contract term if applicable (Start and End date, or indicate if currently providing services); and
- The total dollar amount of the Concession annual Gross Revenues
- Description of projects within the community and other civic involvement

All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to City interview for follow-up. The City may solicit from previous clients, including the City of Chicago, or any available sources, relevant information concerning Respondent's record of past performance.

Provide at least three (3) references that are familiar with Respondent's current operations. The City prefers that Respondents provide individuals that are familiar with Respondent's existing

business daily operations, community involvement and participation. The format for references is provided in **Exhibit 3**.

#### **5.1.5 Executed Qualifications Affidavit**

The form of the affidavit is provided in **Exhibit 4**. Respondent must include an executed Qualifications Affidavit with its Proposal acknowledging that: a) Respondent has received all sections and materials comprising the RFQ, including any addenda; b) the Qualifications is based on all of the terms and conditions stated in the RFQ; and c) the Respondent agrees to develop and operate concessions on the Riverwalk in the manner stated in its Qualifications. Alterations, additions or any other modification to the form of the Qualifications Affidavit will not be accepted and may result in rejection of the Qualifications.

#### **5.1.6 Business Information Statement**

Business License(s)

Respondent must provide copies of appropriate, current and active licenses or certifications required of any individual or entity performing the services described in this RFQ in the City of Chicago, County of Cook and State of Illinois, for itself, its partners and its subcontractors, including evidence that Respondent is authorized by the Secretary of State to do business in the State of Illinois. Provide copies with the Qualifications submission.

These requirements will vary depending upon the circumstances of each Respondent. See the Department of Business Affairs and Consumer Protection (BACP) website for additional information: [www.cityofchicago.org/businessaffairs](http://www.cityofchicago.org/businessaffairs).

If required by law, Respondents are required to have a current Illinois Business License. See the State of Illinois, Department of Business Services website for additional information: [www.cyberdriveillinois.com](http://www.cyberdriveillinois.com) (<http://www.cyberdriveillinois.com/>).

Additionally, visit the State of Illinois' Division of Professional Regulation for information regarding the State of Illinois' Professional Certifications: <http://www.idfpr.com/DPR.asp>

#### **5.1.7 Legal Actions**

Respondent must provide a listing and a brief description of all material legal actions, together with any fines and penalties, for the past five (5) years in which (i) Respondent or any division, subsidiary or parent entity of Respondent, or (ii) any member, partner, etc., of Respondent if Respondent is a business entity other than a corporation, has been:

1. A debtor in bankruptcy; or

2. A defendant in a legal action for deficient performance under a contract or violation of a statute or related to service reliability; or
3. A respondent in an administrative action for deficient performance on a project or in violation of a statute or related to service reliability; or
4. A defendant in any criminal action; or
5. A named insured of an insurance policy for which the insured has paid a claim related to deficient performance under a contract or in violation of a statute or related to service reliability; or
6. A principal of a bond for which a surety has provided contract performance or compensation to an obligee of the bond due to deficient performance under a contract or in violation of a statute or related to service reliability; or
7. A defendant or respondent in a governmental inquiry or action regarding accuracy of preparation of financial statements or disclosure documents.

The City reserves the right to request similar legal action information from Respondent's team members during the evaluation

#### **5.1.8 Economic Disclosure Statement and Affidavit ("EDS")**

The Business Information Statement does not supplant, supersede, or otherwise replace the EDS required by the Chicago Municipal Code and Illinois statute. Respondents, including any individuals or entities that are partners or members in a joint venture, LLC, or other business organization submitting Qualifications must complete the EDS on-line and include their certificate of filing with the Qualifications, if filed on-line, or complete EDS if filed in paper format.

The on-line EDS is found at:

[http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/economic\\_disclosurestatementseds.html](http://www.cityofchicago.org/city/en/depts/dps/provdrs/comp/svcs/economic_disclosurestatementseds.html)

For the purposes of completing an EDS for this RFQ, the "Requesting Department" should be AIS.

Respondents have an ongoing obligation to update the EDS throughout the evaluation period until award, and if awarded a concession License, throughout the term of the License.

Respondents, including any individuals or entities that are partners or members in a joint venture, LLC or other business organization submitting a Qualifications must complete the EDS on-line and include their certificate of filing with the Qualifications, or filed online, or complete the EDS if files in paper format. If Respondent is a limited liability company, a copy of the operating agreement signed by an authorized member or manager of the limited liability company must be attached.

Each member of the limited liability company must execute a separate EDS. In addition, the City may require additional EDS documentation from any entities involved in the operation.

Note that the EDS forms are to be included in the Response.

#### **5.1.9 Financial Statements**

Respondents must submit the following financial statements to the City; Complete financial statements including a balance sheet, income statement and statement of cash flows, preferably prepared in accordance with generally accepted accounting principles, for the most recent three (3) year of financial statements or fewer if the entity has not been in existence for three years. Footnote disclosures must accompany the year-to-date financial statements. If available, financial statements audited or certified by an independent certified public accountant should be provided; otherwise, a notarized statement certifying the accuracy of the financial information and signed by an officer of the proposing entity must accompany the financial information.

If the proposing entity is a subsidiary of another entity, then the financial information described in the preceding paragraph must be provided for the parent entity.

For Respondents who organize or intend to organize as a corporation, partnership, LLP, LLC or joint venture specifically to respond to this RFQ, complete financial information as described above must be submitted for each majority-in-interest partner, LLC/LLP member, joint-venture partner or shareholder.

The City reserves the right to obtain, at its own expense, a Dun and Bradstreet report or other credit report on Respondent, its partners, affiliates and team members, to facilitate financial evaluation of the Qualifications.

Respondent must provide a copy of its audited financial statements for the last 3 years and last quarterly report. Respondents that are comprised of more than one entity must include financial statements for each entity. The City reserves the right to accept or reject any financial documentation other than the financial statements requested by this section.

If Respondent is unable to provide audited financial statements, state the reasons in your Qualifications response and provide financial documentation in sufficient detail to enable the City to assess the financial condition of your company.

Sufficient alternate documentation would be un-audited financial statements from those Respondents not required to have their financial statements audited. At a minimum, the statements need to be the balance sheets and income statements (or equivalent) for the requested three years. Assets/liabilities and income/ expenses must be presented in adequate detail for the City to assess the financial condition of the Respondent.

#### **5.1.11 Insurance Statement**



Respondent should include a statement that they can comply with the City's insurance requirements. Coverage must be sufficient and appropriate for intended purposes of the Chicago Riverwalk; the City, in its sole discretion, will determine the minimum levels of coverage required. All policies will name the City as an additional insured on the primary non-contributory basis. Prior to contract award, the selected Respondent will be required to submit evidence of insurance in the amounts specified in the future RFPs. An example of the insurance requirements is available as Exhibit 5.

## **VI. Evaluation Criteria**

### **6.1 Evaluation Overview**

All Responses will be reviewed and checked for accuracy by a "Review Committee" appointed by the Commissioner. The Review Committee will review the submittals in accordance with the following criteria.

1. Comprehensive submittal including all required documents and thorough responses to all questions in the Application (Exhibit 2).
2. Accurate and full understanding of the project scale, type, unique elements and general approach to achieve the project goals.
3. Demonstrated experience in the successful operation of a business and concession.
4. Demonstrated success of proposed approach methodology in past or current similar projects.
5. Concession that is reflective of the cultural diversity of the neighborhoods of the City of Chicago; and
6. Capacity to perform the services in a busy environment.

### **6.2 Evaluation Process**

In evaluating Qualifications, the Review Committee will first consider the completeness and responsiveness of the Respondent's Qualifications, including an assessment of the Respondent's compliance with and adherence to all submittal requirements requested in Section V (Qualifications Requirements). Qualifications which are incomplete and missing key components necessary to fully evaluate the Qualifications may, at the discretion of the Review Committee, be rejected from further consideration due to "non-responsiveness" and rated Non-Responsive. Qualifications providing responses to all requirements in Section V (Qualifications Requirements) will be evaluated by the Review Committee in order to determine the extent to which a Respondent's Qualifications meets the requirements set forth in the RFQ. In addition, the Review Committee will perform a detailed analysis of the Respondent's qualifications, experience, proposed implementation and management plan, and other factors based on the evaluation criteria outlined in Section 6.1 (Evaluation Overview).

The City reserves the right to seek additional information from any or all Respondents responding to the RFQ including, without limitation, meeting with one or more Respondents. The City also reserves the right to identify finalists and conduct interviews of those finalists. The Review Committee also may review other information gained by checking references and by investigating

the Respondent's financial condition. The Review Committee will also reference City databases to check on Respondent's previous building, health and/or other violations.

This RFQ does not obligate the City to fill any or all locations of the Riverwalk and the City may issue a RFQ to solicit additional vendors in the future if it determines that doing so is in the best interest of the City. Selected Respondents will be eligible to enter into a MCLA and prepare Qualifications for future RFPs for available locations which will be reviewed by an Evaluation Committee appointed by the Commissioner. Upon concurrence by the Commissioner and the Budget Director, the City will enter into a MCLA with that Respondent.

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**Exhibit 1-SCOPE OF SERVICES**  
**CHICAGO RIVERWALK CONCESSIONS PROGRAM HANDBOOK**  
**WITH GUIDING PRINCIPLES**

The City of Chicago (City), acting through its Department of Assets, Information & Services (Department) requests Respondents to operate food and beverage, retail, educational, cultural or entertainment concessions on the Chicago Riverwalk.

The City reserves the right to provide additional locations for concessions operations during the term of the License Agreement. The sites below have been identified. Additional locations not specifically listed below may become available and described in future RFP's.

**Location Description and Goals of Program**

**The Chicago Riverwalk Community Marketplace**

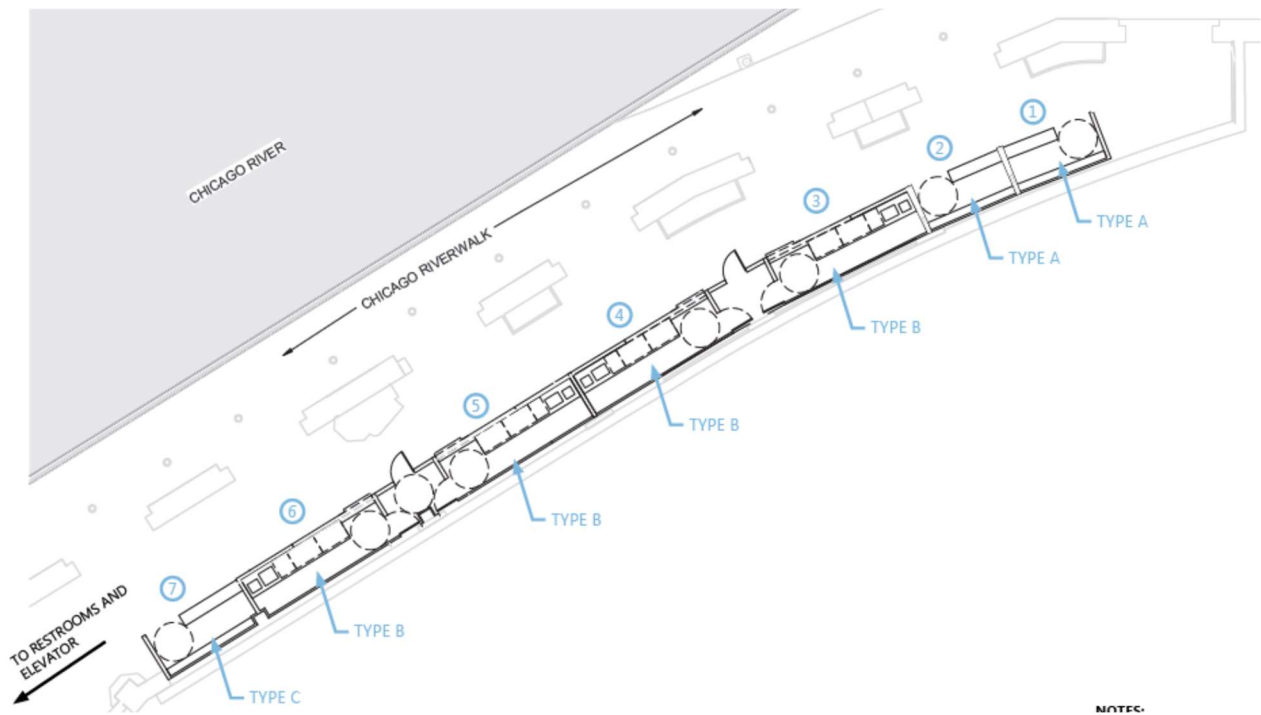
**Address 65 East Riverwalk South- (West of Michigan Avenue)**

This section of the Riverwalk became available in 2019. In order to expand the concessions program and showcase local Chicago owned businesses which highlight the City's rich culture, the Department completed significant infrastructure improvements to expand the pedestrian walkway and allow local businesses to showcase their craft, in pop-up venues. There are three different models or versions of seven kiosks to be activated establishing this corridor as a Riverwalk destination.

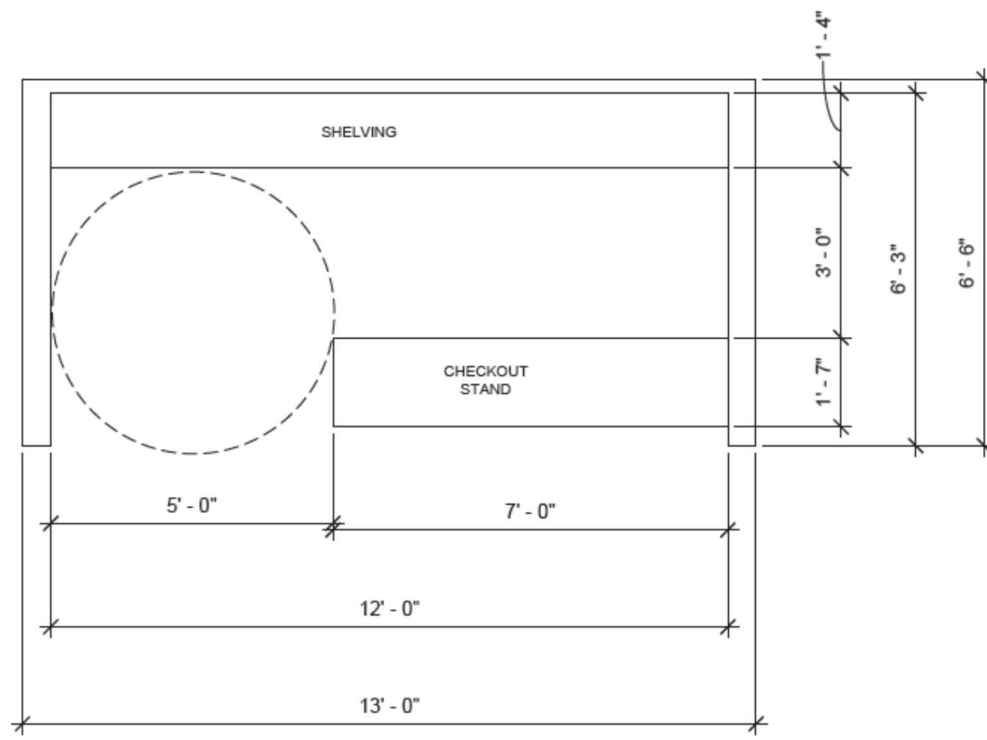
The sale of alcohol is not permitted within the Community Marketplace. Food and non-alcoholic beverages are being requested in addition to retail.

The Community Marketplace is located on the south bank of the Chicago River between Michigan Avenue and Wabash.

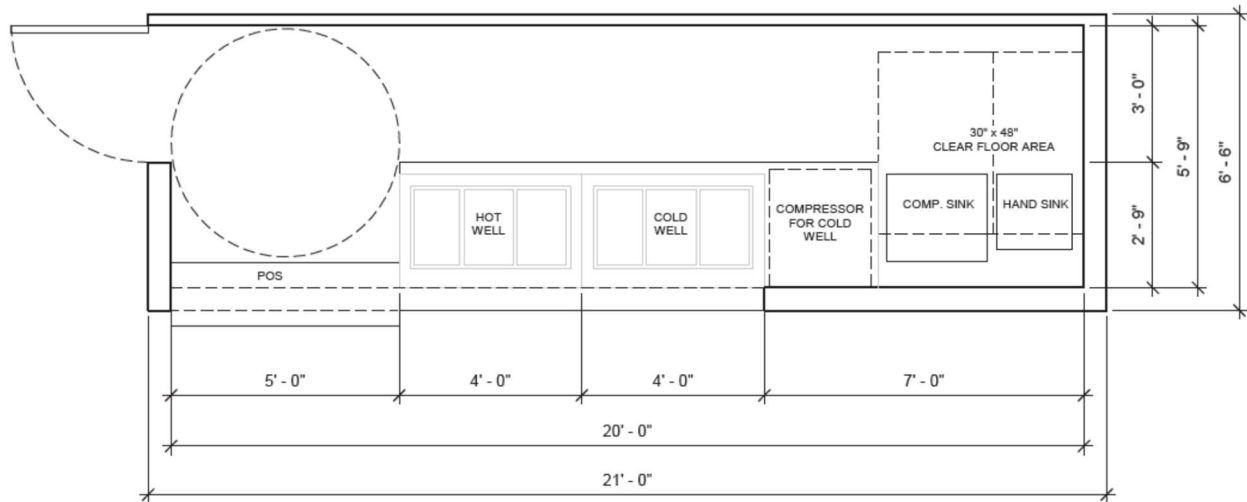




## KIOSK LAYOUT



## KIOSK A & C



**KIOSK B**

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## **EXHIBIT 2 – APPLICATION**

### **COMPANY PROFILE INFORMATION**

**Submit a completed company profile information sheet for prime and each joint venture partner(s), as applicable.**

1. Legal Name of Firm: \_\_\_\_\_
2. Doing Business under Other Company Name?  
If yes, Name of Company: \_\_\_\_\_
3. Headquarters Address: \_\_\_\_\_
4. City, State, Zip Code: \_\_\_\_\_
5. Web Site Address: \_\_\_\_\_
6. Number of Years in Business: \_\_\_\_\_
7. Total Number of Employees: \_\_\_\_\_
8. Total Annual Revenues separated by last 3 full fiscal years:  
2020: \_\_\_\_\_  
2019: \_\_\_\_\_  
2018: \_\_\_\_\_

Identify participants in Respondent's "Team." For example, if Respondent is a business entity that is comprised of more than one legal participant (e.g., Respondent is a general partnership, joint venture, etc.), then Respondent must identify or cause to be identified all participants involved, its respective ownership percentages, and summarize the role, degree of involvement, and experience of each participant separately.

Provide a chronological history of all mergers and/or acquisitions involving the Respondent team members, including all present and former subsidiaries or divisions and any material restructuring activities, if applicable. Include any such forthcoming actions, if such disclosure has already been made generally available to the public and is permitted by law.

If Respondent is a joint venture or partnership, attach a copy of the joint venture or partnership agreement signed by an authorized officer of each partner. Each partner must execute:

Separate Economic Disclosure Statement and Affidavit (“EDS”) completed by each partner and one in the name of the joint venture or partnership.

Insurance certificate should be in the name of the joint venture or partnership business entity.

## **COMPANY QUALIFICATIONS**

**Submit the Qualification and Experience Statement summary below:**

9. Summarize past qualifications and specialized experience:
10. Describe experience operating a concession:
11. List all Chicago Neighborhood festivals, street fairs and any other events that provided experience operating a concession and the corresponding years of participation in each:
12. Confirm your understanding of acquiring and meeting all Department of Health certifications and requirements:
13. Describe any other experience or qualifications appropriate to achieve the goals and objectives the Chicago Riverwalk concessions program:
14. Explanation of overall strategy and methodology for successfully implementing the concession:
15. Describe proposed methods and techniques for assessing and measuring customer needs, wants, preferences, and degree of satisfaction:
16. Describe personnel, applicable technologies, and other resources available for implementing the Services; providing in detail, whether resources are proprietary or outsourced:
17. List and describe existing establishments, include photos and menus:
18. Reference and describe how to meet challenges and conditions at the Riverwalk or similar challenging locations with seasonal operations, limited access routes, temporary facilities, etc.
19. Explain any other experiences that make you especially qualified to operate in the Marketplace of the Chicago Riverwalk.

## **RIVERWALK MARKETPLACE CONCESSION CONCEPT**

This section should include, but is not limited to, the following:

20. Describe in detail and explain the concession or services to be offered on at the Marketplace:
21. Provide proposed Menu and Pricing:
22. Explanation of how Concession is reflective of the neighborhood or the cultural diversity of the City of Chicago:
23. Describe how the concession will convince Riverwalk vendors to visit or patronize the neighborhood location and experience the entire community:
24. Explain how the concession concept provides a unique Chicago experience on the Chicago River:
25. Describe flexibility to include new and interesting menu items to provide a variety of offerings:
26. Any other information that the Review Committee should know about the Respondent's experience, expertise, and qualifications.



### EXHIBIT 3 - COMPANY REFERENCES/CLIENT PROFILE INFORMATION

Submit a completed client profile information sheet for each company reference. Provide a minimum of 2 references.

<b>Company providing reference:</b>	
<b>Contact name and title/position</b>	
<b>Contact telephone number</b>	
<b>Contact e-mail address</b>	

#### QUESTIONS:

1. In what capacity have you worked with this firm in the past?

COMMENTS:

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2. How would you rate this firm's knowledge and expertise?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable) Score: \_\_\_\_\_

COMMENTS:

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3. How would you rate the firm's flexibility relative to changing requirements and emergent needs?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable) Score: \_\_\_\_\_

COMMENTS:

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4. How would you rate the dynamics/interaction between the firm and your staff?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable) Score: \_\_\_\_\_

COMMENTS:

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5. How satisfied are you with the products provided by the firm?

(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable) Score: \_\_\_\_\_

COMMENTS:

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6. What is your level of satisfaction with reporting materials produced by the firm?

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(3 = Excellent; 2 = Satisfactory; 1 = Unsatisfactory; 0 = Unacceptable) Score: \_\_\_\_\_

COMMENTS:

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7. With which aspect(s) of this firm's services are you most satisfied?

COMMENTS:

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8. With which aspect(s) of this firm's services are you least satisfied?

COMMENTS:

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9. Would you recommend this firm's services to your organization again?

COMMENTS:

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#### **EXHIBIT 4: AFFIDAVIT**

The undersigned Respondent hereby submits to the City of Chicago (“City”) Department of Assets, Information and Services (“Department”) the Proposal enclosed, to develop and operate concessions on the Chicago Riverwalk Community Marketplace (“Riverwalk”) based upon all terms and conditions set forth in the City’s Request for Qualifications (“RFQ”), in 2021 as it may have been amended in one or more addenda thereto. Respondent further specifically agrees hereby to provide goods and services in the manner set forth in the Proposal.

1. Respondent intends that the City rely on the Respondent’s submitted information and the representation that Respondent has the capability to successfully undertake and complete the responsibilities and obligations described in the Proposal and the License Agreement, (“Agreement”) to be executed by the City and Respondent, if Respondent is awarded this concession, and Respondent understands the City will so rely.

2. Respondent acknowledges that the City has the right to make any further inquiry it deems appropriate to substantiate or supplement information supplied by the Respondent.

3. Respondent acknowledges that Respondent has read and fully understands all the provisions and conditions set forth in the RFQ and considers the project feasible.

4. Respondent has the capability to successfully undertake and complete the responsibilities and obligations contained in the Proposal.

5. Respondent acknowledges that this Proposal may be withdrawn by requesting such withdrawal in writing at any time prior to the date and time responses to this RFQ are due to be submitted to the City, as set forth in the RFQ documents.

6. The City reserves the right to reject any and all proposals, to withdraw the RFQ, to reissue the RFQ, to enter into negotiations with any and all respondents, and to accept that proposal which in its judgment will provide the best concept for utilization of the Riverwalk.

7. Respondent agrees that this Proposal constitutes an offer valid for a period of 90 days following the Due Date set forth in the RFQ and any addenda thereto.

8. Respondent solely will bear all costs incurred by Respondent in connection with the preparation and submission of this Proposal and with Respondent’s costs associated with any

negotiations with the City. Under no circumstances shall the City be responsible for any costs associated with Respondent's submittal or negotiations of any agreement with the City.

10. Respondent acknowledges that the City will not recognize brokers with regard to the licenses offered by the RFQ and will not be responsible for any fees, expenses or commissions purported to arise from the execution of any license related to this RFQ. Respondent agrees to hold harmless the City from any claims, demands, actions or judgments in connection with any broker fees, expenses or commissions.

11. Respondent acknowledges that the City may conduct various investigations of the Respondent's business experience, financial responsibility, and character. Respondent agrees to permit and cooperate with any such investigations.

Respondent warrants that: 1) Respondent, and any entities under its control or entities that control it, have had no part in the preparation of the documents that comprise this RFQ; 2) Respondent has not in any manner directly or indirectly, conspired with any person or party to compete unfairly or compromise the competitive nature of the RFQ process; 3) the contents of this Proposal as to rent, terms or conditions have not been communicated by the undersigned nor by any employee or agent to any other person engaged in this type of business, prior to the official opening of this Proposal; and 4) Respondent has not engaged in any activities in restraint of trade in connection with this RFQ.

Name of Respondent (Legal Name):

Signature of Authorized Person: \_\_\_\_\_

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

Business Address of Respondent: \_\_\_\_\_

Business Phone Number: \_\_\_\_\_

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

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

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

Signed and sworn before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Signature: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

Affix Seal

## EXHIBIT 5: INSURANCE REQUIREMENTS

### Concessions on the Chicago Riverwalk Community Marketplace Food Vendors

#### A. INSURANCE REQUIRED

Vendor must provide and maintain at Vendor's own expense, during the term of the Agreement and during the time period following expiration if Vendor is required to return and perform any work, services, or operations, the insurance coverages and requirements specified below, insuring all work, services, or operations related to the Agreement.

1) Workers Compensation and Employers Liability (Primary and Umbrella)

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide a service under this Agreement and Employers Liability coverage with limits of not less than \$1,000,000 each accident; \$1,000,000 disease-policy limit and \$1,000,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Vendor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

2) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury, personal injury, and property damage liability. Coverages must include but not be limited to the following: All premises and operations, products/completed operations, separation of insureds, defense, and contractual liability (not to include Endorsement CG 21 39 or equivalent).

The City must be provided additional insured status with respect to liability arising out of Vendor's work, services or operations performed on behalf of the City. The City's additional insured status must apply to liability and defense of suits arising out of Vendor's acts or omissions, whether such liability is attributable to the Vendor or to the City on an additional insured endorsement form acceptable to the City. The full policy limits and scope of protection also will apply to the City as an additional insured, even if they exceed the City's minimum limits required herein. Vendor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Vendor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 3) Automobile Liability (Primary and Umbrella)  
When any motor vehicles (owned, non-owned and hired) are used in connection with work, services, or operations to be performed, Automobile Liability Insurance must be maintained by the Vendor with limits of not less than \$500,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater, for bodily injury and property damage and covering the ownership, maintenance, or use of any auto whether owned, leased, non-owned or hired used in the performance of the work or services. The City is to be added as an additional insureds on a primary, non-contributory basis.

Vendor may use a combination of primary and excess/umbrella policy/policies to satisfy the limits of liability required herein. The excess/umbrella policy/policies must provide the same coverages/follow form as the underlying policy/policies.

- 4) Excess/Umbrella  
Excess/Umbrella Liability Insurance must be maintained with limits of not less than \$1,000,000 per occurrence, or the full per occurrence limits of the policy, whichever is greater. The policy/policies must provide the same coverages/follow form as the underlying Commercial General Liability, Automobile Liability, Employers Liability and Completed Operations coverage required herein and expressly provide that the excess or umbrella policy/policies will drop down over reduced and/or exhausted aggregate limit, if any, of the underlying insurance. The Excess/Umbrella policy/policies must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Vendor may use a combination of primary and excess/umbrella policies to satisfy the limits of liability required in sections A.1, A.2, A.3 and A.4 herein.

- 5) Property  
Vendor is responsible for all loss or damage to personal property (including but not limited to materials, equipment, tools and supplies) owned, rented, or used by Vendor and for loss or damage to property in the Vendor's care, custody and control.

## **B. Additional Requirements**

Evidence of Insurance. Vendor must furnish the City of Chicago, Department of Assets Information and Services, Attn: Bureau of Asset Management, 2 North LaSalle Street, Suite 200, Chicago, IL. 60602, original certificates of insurance and additional insured endorsement, or other evidence of insurance, to be in force on the date of this Agreement, and renewal certificates of Insurance and endorsement, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. Vendor must submit evidence of insurance prior to execution of Agreement. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Agreement. The failure of the City to obtain, nor the City's receipt of, or failure to object to a non-complying insurance certificate, endorsement or other insurance evidence from Licensee, its insurance broker(s) and/or insurer(s) will not be construed as a waiver by the City of any of the

required insurance provisions. Vendor must advise all insurers of the Agreement provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Vendor for liabilities which may arise from or relate to the Agreement. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time.

Failure to Maintain Insurance. Failure of the Vendor to comply with required coverage and terms and conditions outlined herein will not limit Vendor's liability or responsibility nor does it relieve Vendor of the obligation to provide insurance as specified in this Agreement.

Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to suspend this Agreement until proper evidence of insurance is provided, or the Agreement may be terminated.

Notice of Material Change, Cancellation or Non-Renewal.

Vendor must provide for sixty (60) days prior written notice to be given to the City in the event coverage is substantially changed, canceled or non-renewed and ten (10) days prior written notice for non-payment of premium.

Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Vendor.

Waiver of Subrogation. Vendor hereby waives its rights and its insurer(s)' rights of and agrees to require their insurers to waive their rights of subrogation against the City under all required insurance herein for any loss arising from or relating to this Agreement. Vendor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City received a waiver of subrogation endorsement for Vendor's insurer(s).

Vendor's Insurance Primary. All insurance required of Vendor under this Agreement shall be endorsed to state that Vendor's insurance policy is primary and not contributory with any insurance carrier by the City.

No Limitation as to Vendor's Liabilities. The coverages and limits furnished by Vendor in no way limit the Vendor's liabilities and responsibilities specified within the Agreement or by law.

No Contribution by City. Any insurance or self-insurance programs maintained by the City do not contribute with insurance provided by Vendor under this Agreement.

Insurance not Limited by Indemnification. The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

Insurance and Limits Maintained. If Vendor maintains higher limits and/or broader coverage than the minimums shown herein, the City requires and shall be entitled the higher limits and/or broader coverage maintained by Vendor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.



Joint Venture or Limited Liability Company.

If Vendor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

Other Insurance obtained by Vendor. If Vendor desires additional coverages, the Vendor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Vendor shall name the Subcontractor(s) as a named insured(s) under Vendor's insurance or Vendor will require each Subcontractor(s) to provide and maintain Commercial General Liability, Commercial Automobile Liability, Worker's Compensation and Employers Liability Insurance and when applicable Excess/Umbrella Liability Insurance with coverage at least as broad as in outlined in Section A, Insurance Required. The limits of coverage will be determined by Vendor. Vendor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Vendor is responsible for ensuring that each Subcontractor has named the City as an additional insured where required and name the City on an additional insured endorsement form acceptable to the City. Vendor is also responsible for ensuring that each Subcontractor has complied with the required coverage and terms and conditions outlined in this Section B, Additional Requirements. When requested by the City, Vendor must provide to the City certificates of insurance and additional insured endorsements or other evidence of insurance. The City reserves the right to obtain complete, certified copies of any required insurance policies at any time. Failure of the Subcontractor(s) to comply with required coverage and terms and conditions outlined herein will not limit Vendor's liability or responsibility.

City's Right to Modify. Notwithstanding any provisions in the Agreement to the contrary, the City, Department of Finance, Risk Management Office maintains the right to modify, delete, alter or change these requirements.

**EXHIBIT 6: MASTER CONCESSIONS LICENSE AGREEMENT**

**CHICAGO RIVERWALK  
MASTER CONCESSION LICENSE AGREEMENT**

**BETWEEN**

**THE CITY OF CHICAGO  
(CHICAGO DEPARTMENT OF  
ASSETS, INFORMATION AND SERVICES)**

**AND**

---

[NAME OF LICENSEE]



**LORI E. LIGHTFOOT  
MAYOR**

**DAVID J. REYNOLDS  
COMMISSIONER**

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## **CHICAGO RIVERWALK MASTER CONCESSION LICENSE AGREEMENT**

This Chicago Riverwalk Master Concession License Agreement (“**Agreement**”) is entered into as of \_\_\_\_\_, 20\_\_ by and between \_\_\_\_\_ [insert legal name of entity] a(n) \_\_\_\_\_ [insert type of entity and state of organization; e.g., Illinois limited liability company] (“**Licensee**”), which will operate a concession on the Chicago Riverwalk known as \_\_\_\_\_ [insert Licensee’s trade name; i.e., the name of the concession that will appear on Licensee’s signage at the Concession Space], 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 Assets, Information and Services, or any successor department thereto (“**AIS**” or “**Department**”).

### **BACKGROUND**

The City owns the area immediately adjacent and parallel to the south bank of the Chicago River to Wacker Drive and from Lake Street to Lake Shore Drive (the “**Chicago Riverwalk**” or “**Riverwalk**”), and the Commissioner of AIS has the authority to operate, manage and maintain the Chicago Riverwalk, including the authority (subject to the approval of the Budget Director, and the approval of the Corporation Counsel as to form and legality) to enter into concession agreements for a term up to 36 months, with the right to extend such agreement for up to two additional consecutive terms of up to 12 months each (total of 60 months). The City has determined that it is in the best interest of the City to enter into concession agreements for food, beverages, goods and services within the Chicago Riverwalk to expand the existing concession program. Concessions are expected to provide first-class food, beverage, retail and service facilities on the Chicago Riverwalk. Activities on the Chicago River are also subject to the provisions of the Municipal Code of Chicago (the “**Municipal Code**”), including authority granted to the Chicago Department of Transportation in Chapter 10-40 of the Municipal Code.

The City issued a Request for Proposals (“**RFQ**”) for concessions to operate on the Chicago Riverwalk. Licensee was deemed “qualified” to operate a concession featuring \_\_\_\_\_ [specify type of Products] at \_\_\_\_\_ [Location; e.g., The Chicago Community Corridor, The Civic District, The Jetty, or Independent Cart]. The City and Licensee desire to enter into this Agreement, which will govern any Use Agreements (as defined below) entered into by the City and Licensee pursuant to this Agreement.

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

### **ARTICLE 1 CITY APPROVAL**

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, subject to the approval of the Budget Director and the approval of the Corporation Counsel as to form and legality.

## **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	Scope of Services- Concessions Operation Concept and Implementation Plan
Exhibit 2	Products and Price List - Menu
Exhibit 3	Form of Letter of Credit
Exhibit 4A	Insurance Requirements Applicable to All Licensees
Exhibit 4B	Insurance Requirements Applicable to Construction on the Chicago Riverwalk
Exhibit 5	Economic Disclosure Statement
Exhibit 6	Chicago Riverwalk Community Marketplace Concession Program Handbook
Exhibit 7	Capital Improvement Design and Construction Requirements
Exhibit 8	Chicago Riverwalk Concessions Use Agreement

## **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 Riverwalk 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.

**“Budget Director”** means the chief executive of the City’s Office of Budget and Management.

**“Chicago Riverwalk Community Marketplace Concession Program Handbook”** or **“Handbook”** means the handbooks developed by AIS to govern the uniform and consistent design and operation of the concession programs at the Chicago Riverwalk and Community Marketplace. The Chicago Riverwalk Marketplace Concession Program Handbook is available on the Chicago Riverwalk website set forth in Exhibit 6 attached hereto. Any amendment of the Chicago Riverwalk Marketplace Concession Program Handbook by the Department during the Term of this Agreement will be binding on Licensee without need for amendment of this Agreement, to the extent that the amendment of Chicago Riverwalk Concession Program Handbook does not conflict with the other terms and conditions of this Agreement.

**“Commissioner”** means the head of the Department and any City officer or employee authorized to act on his behalf. City contractors and consultants, including the Concession Management Representative, have no authority to grant approvals or consents required to be granted by the Commissioner under this Agreement, except where the Concession Management Representative is expressly authorized in writing to do so.

**“Common Area Maintenance or Operations License Fee”** means the amount payable by Licensee for use of the Licensed Space as set forth in the RFP and any Use Agreement.

**“Common Areas”** means those areas of the Riverwalk 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 her/his behalf.

**"Concession"** means Licensee's business of offering the Products identified in Exhibit 2 for sale at retail to the public at the Riverwalk pursuant to this Agreement.

**"Concession Management Representative"** or **"CMR"** means the entity retained by the City to assist in overseeing Concessions, including the construction of Improvements, at the Riverwalk.

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

**"Corporation Counsel"** means the head of the City's Department of Law.

**"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.

**"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 Common Area Maintenance Fee or Operations Fee, any liquidated damages specified in the Agreement for non-compliance with the City's requirements for

Concession operations.

**“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 on the Chicago Riverwalk.

**“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 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.

**“License”** means the privilege granted to Licensee pursuant to a fully-executed Use Agreement entered into pursuant to and in accordance with this Agreement to operate the Concession at the Chicago Riverwalk during the term of the Agreement.

**“Location”** means the site described in the Use Agreement designated for the operation of concession as defined in Concession Space as well as any additional space used for storage of supplies and materials to facilitate the operation of concessions.

**“Products”** means the food and beverage menu items and related 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 2.

**“Request for Proposal (RFP)”** means a City request for proposals for the operation of a concession(s) at a particular location on the Chicago Riverwalk.

**“Services”** means the activities involved in providing the successful operation of concessions on the Chicago Riverwalk.

**“Storage Space”** means such portion of the 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, and, where applicable, the Licensee’s general contractor.

**“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. on that date that is thirty-six (36) months following the Effective Date. As specified in the RFQ, the Term may be extended up to two (2) additional twelve (12) month periods by mutual agreement of the Commissioner, subject to the approval of the Budget Director and the approval of the Corporation Counsel as to form and legality, and Licensee in writing.

**“Term Sheet”** will be negotiated between the Commissioner and Licensee in response to a Request for Proposals to allow concession operations on the Chicago Riverwalk and included as an exhibit to the Use Agreement.

**“Use Agreement”** means a license agreement, in substantially the form attached hereto as Exhibit 8, for the operation of a concession on the Chicago Riverwalk, which license agreement will be subject to the terms of this Agreement and such other terms as determined by the City.

**“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. TERMS FOR RFP MASTER CONCESSIONS CONTRACTS**

##### **4.1. Access to Chicago Riverwalk**

The Licensee must not access the Chicago Riverwalk location for the operation of concessions without receipt of a written Use Agreement issued by the Department. Access to Locations will not be permitted without a written Use Agreement. Services will be described in response to a Request for Proposal ("RFP") as described below. Only if the Licensee has successfully been awarded a Use Agreement will access to the approved Location be permitted. The Use Agreement will indicate the specification number, project description, milestones, deadlines, and other such pertinent information in the Term Sheet.

##### **4.2. Proposals**

###### **4.2.1. Request for Proposals**

A. From time to time the Commissioner may issue a Request for Proposals for the operation of a concession(s) on the Chicago Riverwalk. Licensee will be eligible to respond to the RFP if it is for a type of concession previously deemed qualified. RFPs will set forth the location of the available Concession Space and deliverables, start date, programming, special events and end date. Following Licensee's submission of a Proposal in response to the RFP, the City will review the Proposal and may elect to approve it, reject it, or use it as a basis for further negotiations with the Licensee. All Use Agreements are subject to the approval of the Commissioner, Budget Director and Corporation Counsel (as to form and legality) and no Use Agreement will become binding upon the City until it is approved, in writing, by the Commissioner, Budget Director and Corporation Counsel (as to form and legality). The City is not liable for any costs incurred by the

Licensee for the preparation of its proposal or any other costs Licensee incurs in responding to an RFP.

B. The Licensee acknowledges and agrees that the City is under no obligation to issue any Request for Proposals to the Licensee and that the City has entered into master concession license agreements with other licensees and, in the Commissioner's sole discretion, the City may issue a Request for Proposal to only one licensee or may issue the same Request for Proposal to more than one licensee in order to obtain competitive proposals.

#### 4.2.2. Proposal submittals

A. The Licensee will be invited to respond to a Request for Proposal by submitting a Proposal to the Commissioner which describes the Licensee's concession and is responsive to items requested in the Request for Proposal; term, operation plan, menu, list of key personnel, or any other items to be addressed, for Request for Proposal (date) Chicago Riverwalk Master Concession License Agreement Department of Assets, Information and Services. Each RFP will have a designated Specification Number. In addition, Licensee must also include in its Proposal submittal those elements pertaining to development of a scope of services listed in Exhibit 1 Detailed Scope of Services, all of which conform to the terms of the Request for Proposal and the terms and conditions of this Agreement. Proposals will constitute irrevocable offers for a period of 60 calendar days after receipt by the City. Any and all costs associated with the preparation of Proposals will not be a reimbursable cost under this Agreement and the City is not liable for any additional costs.

B. The City's acceptance of a proposal will be evidenced by a Use Agreement to be executed by the Commissioner, with the approval of the Budget Director and Corporation Counsel (as to form and legality). The Licensee will not be allowed access until the Use Agreement is executed and effective. All Use Agreements will be governed by the terms and conditions of the Agreement. The Use Agreement will be interpreted in the following order of precedence: the terms of this Agreement, Request for Proposal, and Use Agreement. Notwithstanding anything to the contrary contained in this Agreement, if any Use Agreement contains terms that are inconsistent or conflict with this Agreement, or shift the risk allocation contemplated in this Agreement, the terms of this Agreement shall supersede such contradictory or inconsistent terms of such Use Agreement.

C. The Licensee acknowledges and agrees that the City either may select from among those Proposals submitted in response to a Request for Proposal and are in the best interests of the City for the available Locations or may reject any and all Proposals submitted in response to a Request for Proposal.

#### 4.2.3. Deadlines for Submittal of Proposals

Proposals will be submitted to the Commissioner no later than the date set forth in the Request for Proposal and if no date is specified then no later than 15 business days following the date of the City's issuance of the Request for Proposals. Failure to provide a Proposal on a timely basis may result in rejection of the Proposal.

#### 4.2.4. Negotiation Possible

The City reserves the right, at its option, to negotiate a more satisfactory Proposal with one or more licensees.

#### 4.3. Notice to Proceed

After the Commissioner or his/her designee issues a fully-executed Use Agreement, Licensee will commence Services immediately or on the date included in the Term Sheet.

#### 4.4 License.

A. Any Use Agreement entered into pursuant to this Agreement and an RFP will grant Licensee a temporary, non-exclusive privilege to operate a Concession at the Location identified in the Use Agreement. The Licensee as designated by Use Agreement will not be a tenant.

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 Location by virtue of this Agreement or any Use Agreement or by virtue of the Licensee's use of any Location. In addition, the City reserves the right to provide programming events in the 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 any Location. Any rights not expressly granted to the Licensee through this Agreement or a Use 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. The City is not obligated to enter into any Use Agreement with the Licensee.

B. Any Use Agreement entered into pursuant to this Agreement and an RFP is subject to the terms of the Handbook.

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 Chicago Riverwalk 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 Chicago Riverwalk;
- (iv) would, or would be likely to, increase the premiums for insurance policies maintained by the City; or

- (v) would involve any illegal purposes.

4.5 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 any Use Agreement is solely 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.

4.6 General Requirements for Operation of Concessions. The City retains the right to take such actions with respect to any Use Agreement as are necessary to ensure that the Chicago Riverwalk operates in the most effective and efficient way possible. 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 Chicago Riverwalk 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 Handbook, 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 consistent with the "Standard of Service" that appear in the Handbook. The Commissioner or the CMR has the right to make reasonable objections to the appearance and condition of the Licensed Space if they do not comply with the Standard of Service. 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 CMR (or immediately upon receipt of such a notice if the Commissioner or CMR deems non-compliance hazardous or illegal). Licensee’s failure to timely cure the non-compliance as required by the Commissioner or CMR 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 goodwill among visitors to the Chicago Riverwalk, and not as a penalty, the amount of \$100 per day 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 Chicago Riverwalk. 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 must not place or install any racks, stands, or trade fixtures directly on or over the boundaries of its Location. Licensee must not use any space outside the Location for sale, storage or any other undertaking, other than in connection with deliveries made in a prompt, timely and efficient manner.

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

- (i) use reasonable efforts to remedy problems and issues raised by Chicago Riverwalk patrons with respect to the operation of the Location or Common Areas;
- (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 Location 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.

H. Licensee is not permitted to sell any items or types of items not identified in Exhibit

2, or to adjust the price list in Exhibit 2, or conduct any other business from the Licensed Space, unless otherwise agreed in writing by the Commissioner.

#### 4.7 Hours of Operation.

A. Licensee must begin conducting its Concession operations in the Licensed Space(s) as outlined in the Term Sheet of the applicable Use Agreement.

B. Except as otherwise permitted under this Agreement, if Licensee fails to operate its Concession from the Location 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 \$500 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 Location.

#### 4.8 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. See Handbook, which may be modified at the Department's sole discretion.
- (ii) 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 Location.
- (iii) Licensee and its personnel must at all times participate and cooperate fully in all quality assurance programs that may be instituted by the Commissioner or CMR



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 or CMR. An appropriate officer or management representative of Licensee must meet with the Commissioner or CMR as requested by the Commissioner or CMR to discuss matters relating to this Agreement, including merchandising and marketing plans. In addition, at the request of the Commissioner or CMR, an appropriate officer or management representative of Licensee must attend other meetings with the City or any other parties designated by the Commissioner or CMR.

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 Location(s) is/are open. The General Manager must spend substantially all of his or her working hours at the Riverwalk, unless the Commissioner approves in writing another arrangement. Licensee shall not allow an individual to act as the General Manager if the Commissioner in his/her sole discretion has determined that such individual's work performance is not consistent with the fulfillment of Licensee's obligations under this Agreement.

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.

#### 4.9 Operation and Maintenance.

##### A. Role of City

The City, at its sole cost and expense, will keep in good repair the Common Areas of the Chicago Riverwalk. 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 Location, or the Chicago Riverwalk 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. Role of Licensee

- (i) Licensee must provide all utilities, cleaning and janitorial services to the Location. Licensee must clean, maintain and repair (including replacements, where necessary) the Location and Improvements in first-class condition and repair during the entire Term.
- (ii) Licensee is responsible for pest control within the Location 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 or CMR 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 or CMR's pest control contractor. Licensee must furnish the Commissioner and CMR a copy of its pest control contract and service records upon request.
- (iv) 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 Location, 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 ducts 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.
- (v) If applicable, 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 Location 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 Location.

- (vi) Upon request, Licensee must provide City or CMR with monthly repair and maintenance reports detailing all repair and maintenance undertaken with respect to its Location. 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.
- (vii) To the extent any City ordinance imposes a stricter standard than the requirements of this section, the stricter standard must govern.
- (viii) Any damage to property of the Chicago Riverwalk 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 the applicable Use 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 Chicago Riverwalk 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 Location, unless approved by the Commissioner in writing.

4.10 Utilities.

A. Licensee must pay for all utilities furnished to the Location, to the extent separately metered. All utilities must be separately metered for usage within a Location 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 Location as follows:

- (i) where the utility lines, including gas, electrical, telephone, hot and cold water, fire sprinkler, gas, and sewer serve both the Location and other areas of the Chicago Riverwalk, Licensee is only obligated to maintain those branch lines and facilities that exclusively serve the Location; and
- (ii) where such utility lines are entirely for the exclusive service of the Location, Licensee is obligated to maintain the utility lines from the Location up to the main entry point of the utility to the Chicago Riverwalk. 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 Location.

#### 4.11 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 Chicago Riverwalk designated by the Commissioner from time to time. Within its Location, 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 Location. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Location 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 Location. The Commissioner reserves the right, from time to time, to establish rules and revised processes for how refuse is managed.

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, including but not limited to those policies, rules and regulations incorporated in the Handbook. 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 AIS. AIS 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. Licensees must comply with AIS's waste recovery program by sorting, to the maximum extent possible, recyclable and compostable waste from that which will be sent to landfill.

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

#### 4.12 Promotion / 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 (solely identifying the name of the Concession, 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 Chicago Riverwalk except within the Location and except as are related to Licensee's Concession

#### 4.13 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.

#### 4.14 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 Location; 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 Riverwalk;
- (ii) Decorate or to make repairs, inspections, alterations, additions, or improvements, whether structural or otherwise, in and about the Riverwalk and for such purposes to enter upon the Location, and during the continuance of any of the work, to temporarily close doors, entryways, and public space in the Chicago Riverwalk, and to interrupt or temporarily suspend services, all without affecting any of Licensee's obligations under this Agreement, so long as the Location is reasonably accessible and usable;
- (iii) Keys to the Locations, including master keys and passkeys, to all doors within and into the Locations 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 Locations, 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 or the applicable Use Agreement, whichever is earlier, Licensee must return all keys to the Concession Management Representative and must disclose the combination of any safes, cabinets or vaults left in the Location;

- (iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Location and to require all such items and furniture and similar items to be moved into or out of the Chicago Riverwalk and the Location 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 Location without the prior written consent of the Commissioner. Movements of Licensee property into or out of the Chicago Riverwalk or the Location and within the Chicago Riverwalk 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 Chicago Riverwalk or the Location;
- (v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Chicago Riverwalk and the Location;
- (vi) Show the Location to prospective Licensees at reasonable times and, if vacated or abandoned, prepare the Location for re-licensing;
- (viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Locations at reasonable locations;
- (ix) Enter the Location for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the Handbook, 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 Chicago Riverwalk.
- (xi) Promulgate from time-to-time rules and regulations regarding the operations at the Chicago Riverwalk; and

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 Chicago Riverwalk, Licensee must pay an up-front fee of \$500 per occurrence in the form of

a certified check or money order.

## **ARTICLE 5 LICENSE TO OPERATE CONCESSIONS**

5.1 Licensed. As provided in Section 4.1, the City grants Licensee the right to respond to RFPs for which the Licensee has been deemed qualified for the operations of a Concession at a Chicago Riverwalk Location pursuant to a Use Agreement for a Term to be defined in the RFP.

A. Concession Space. The Location includes the Concession Space. Concession Space is to be used for the sale of Products at retail to the public.

B. Storage Space. The Location includes the Storage Space, if any, identified in Use Agreement. 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 Location. 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 License 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 any Use Agreement 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 to enhance Riverwalk 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 Location. Licensee shall retain title and ownership to all Products and other Licensee personal property and proprietary trade fixtures in the Location, except in the event of deemed abandonment, as determined in the sole discretion of the Commissioner after termination or expiration of this Agreement. The City owns all other property in the Location, and, upon completion, Licensee Improvements.

## **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 Location.

A. At the termination or expiration for any reason of this Agreement, or any applicable Use Agreement, whichever is earlier, Licensee must promptly, peaceably, quietly and in good order quit, deliver up and return the Location 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 before the date of termination or expiration. Any personal property or trade fixtures remaining in the Location 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).

D. Licensee must repair any damage to the Location caused by Licensee's removal of Licensee personal property, trade fixtures. 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 Termination Due to Change in Riverwalk Operations. This Agreement is subject to termination by either party on 60 days' written notice in the event of any action by the FHWA or any other governmental entity or the issuance of an order by any court of competent jurisdiction which prevents or restrains the use of the Riverwalk or a portion thereof that renders performance by either party in the Location impossible, and which governmental action or court order remains in force and is not stayed by way of appeal or otherwise, for a period of at least 90 days, so long as the action or order is not the result of any Event of Default of Licensee.

6.4 Eminent Domain.

A. If the entirety of the Chicago Riverwalk or a substantial part, including the entire Location, is taken by eminent domain by an authority other than the City, the Term of this Agreement will end upon the earlier of the date when possession is required by the condemning authority or the effective date of the taking.

B. If any eminent domain proceeding is instituted by an authority other than the City in which it is sought to take any part of the Chicago Riverwalk, the taking of which would, in the good faith judgment of the Commissioner or Licensee, render it impractical or undesirable to conduct Concession operations on the remaining portion of the Location for the intended purposes, the Commissioner and Licensee will each have the right to terminate this Agreement upon not less than 90 days' written notice to the other.

C. In the event of termination of this Agreement under either (A) or (B), all Fees accrued for the Location in question prior to the termination date is payable to the City. However, the City shall have no obligation to pay Licensee any unamortized Improvement Costs for such Location, and Licensee shall look solely to the condemning authority for any award of damages.

6.5 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 Location as if the Agreement had expired on that date.

## 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 License Fee and the Percentage Fee (collectively, "**Fees**") as follows:

- (i) **Operations Fee.** The "**Operations Fee**" is payable in equal monthly installments on the first day of each calendar month. The Monthly Fee will begin to accrue on the first day access is granted in accordance with the Use Agreement and will be subject to adjustment to reflect Additional Space and any Licensed Space that has

been vacated by Licensee at Commissioner's direction, and as prorated. The Operations Fee will reflect utility use and costs for the City to maintain the common areas shared by the Licensee and other concessions operators.

- (ii) **Percentage Fee:** The "**Percentage Fee**" is an amount equal to the Percentage Rate set forth in the Term Sheet of the Use Agreement multiplied by Gross Revenues for each Licensee whose concession includes the sale of alcohol. The percentage fee is due within thirty days of the end of the Term defined in the Use Agreement.
- (iii) 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 Location, 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 Location (collectively, "**Impositions**"). Licensee must provide the Concession Management Representative 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 the first day of each calendar month, beginning on the first of the month and continuing throughout the Term as defined in the Use Agreement, Licensee must pay the Common Area Maintenance Fee or Operations Fee.

## 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 within 10 business days of request a complete statement, certified by Licensee, of the amount of Gross Revenues derived from the Concession Space by Licensee during specified time period.

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. 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 February 15 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. The City reserves the right to require License submit financial 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 Location 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. If the City requires a report 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 Chicago Riverwalk 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, if applicable, 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 to prepare and keep books, source documents, records and accounts 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
- (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 4A (Insurance Requirements Applicable to All Licensees) covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois. If any construction is to be performed, then, prior to any construction work commencing, Licensee must cause its general contractor at its sole expense, to procure and maintain at all times during the construction, and during any time period during which any contractor is required to return to perform additional construction work for any reason whatsoever, the types of insurance specified in Exhibit 4B (Insurance Requirements Applicable to Construction on the Chicago Riverwalk), 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 Agreement or arising out of or being in any way connected with the Licensee's performance under this Agreement and any Use Agreement, 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 Agreement or any Use Agreement or otherwise to pay or perform its obligations to any Subcontract; the City's exercise of its rights and remedies under this Agreement or any Use Agreement; 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 Agreement and any Use Agreement. 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 this Agreement or any Use Agreement, 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.

Licensee, for itself and its contractors, waives the right to receive the benefits of or to invoke the protection afforded by all maritime statutory limitations of liability, including the Limitation of Vessel Owner's Liability Act, 48 U.S.C. 183 et seq., that could act to diminish Licensee's or its contractors' liability for any harm or damage arising under the Agreement in any manner or for all claims or other costs arising from or occasioned by your operations on any waterways, including the Chicago River. This provision is not intended to avoid or waive federal jurisdiction under the applicable admiralty laws. This waiver extends only to the Indemnified Parties, and not to third parties seeking recovery for claims solely against you.

The indemnities in this section survive expiration or termination of this Agreement for matters occurring or arising during the term of this Agreement 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 Agreement, including the insurance requirements set forth in the Agreement.

### 8.3 Security

#### A. Form of Security.

- (i) Upon the Effective Date of the Use Agreement to operate a concession at a Location on the Chicago Riverwalk, Licensee must deliver to the City an irrevocable, unconditional sight draft Letter of Credit in favor of the City. The face amount of the Letter of Credit and any replacements or renewals of it must be in the amount of \$5,000 and must be maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement. The Letter of Credit must be in the form set forth in Exhibit 3 or as otherwise approved by the Corporation Counsel.
- (ii) In lieu of the Letter of Credit, Licensee may provide cash or a cashier's check in the same amount for immediate deposit in the City's accounts. The Letter of Credit, cash or cashier's check, as applicable, is referred to in this Agreement as the "**Security**." The original Letter of Credit, and all replacements of it, must be issued with an expiry date of at least one year after their respective dates of issuance. The Security secures the faithful performance by Licensee of all of Licensee's obligations under this Agreement and any Use Agreement. The Commissioner is entitled to draw on any such Letter of Credit unless proof of renewal of the Letter of Credit or a replacement Letter of Credit in form and substance satisfactory to the Comptroller has been furnished to the Commissioner at least 30 days before its expiration date. The City will hold the proceeds as a cash Security to secure the full and faithful performance of Licensee's obligations under this Agreement and any Use Agreement. The Commissioner is not obligated to pay or credit Licensee with interest on any Security.
- (iii) The Commissioner also is entitled to draw on the Letter of Credit in whole or in part upon the occurrence of an Event of Default, in which event the Commissioner

is entitled to apply or retain all or any part of the proceeds of it or any cash or other Security deposited by Licensee and held by the City for the payment of any obligation of Licensee arising before or after the Event of Default.

- (iv) The Letter of Credit must provide that the Commissioner may draw upon the Letter of Credit in whole or in part upon the delivery by the Commissioner to the issuer of the Letter of Credit of a demand for payment, purportedly signed by the Commissioner, together with a written statement that the Commissioner is entitled to draw upon the Letter of Credit under the terms of this Agreement. If amounts are drawn upon the Letter of Credit or amounts of a cash Security are applied by the Commissioner in accordance with the terms of this Agreement, Licensee must reinstate the Letter of Credit or cash Security to its full amount required in this Agreement within 5 days following notification by the Commissioner of the City's draw upon the Letter of Credit or use of the cash Security. The rights reserved to the Commissioner or the City under the Letter of Credit or any cash Security are in addition to any rights they may have under this Agreement or under law.

B. Qualified Issuers. The Letter of Credit called for in this Agreement must be issued by companies or financial institutions having a rating of "A" or better as determined by Standard and Poor's or by Moody's Investors Service, Inc., or a net worth of at least \$500,000,000, and must have an office in Chicago where the Commissioner may draw on the Letter of Credit. The Commissioner also reserves the right to order Licensee to immediately close some or all of the Location until the Letter of Credit is in place and effective.

C. Right to Require Replacement of Letter of Credit. If the financial condition of any Letter of Credit issuer issuing the Letter of Credit materially and adversely changes, the Commissioner may, at any time, require that the Letter of Credit be replaced with a Letter of Credit from another institution and in accordance with the requirements set forth in this section.

D. No Excuse from Performance. None of the provisions contained in this Agreement nor in the Letter of Credit required under this Agreement excuse Licensee from faithfully performing in accordance with the terms and conditions of this Agreement or limit the liability of Licensee under this Agreement for any and all damages in excess of the amounts of the Letter of Credit.

E. Non-Waiver. Notwithstanding anything to the contrary contained in this Agreement, the failure of the Commissioner to draw upon the Letter of Credit required under this Agreement or to require Licensee to replace the Letter of Credit at any time or times when the Commissioner has the right to do so under this Agreement does not waive or modify the Commissioner's rights to draw upon the Letter of Credit and to require Licensee to maintain or, as the case may be, replace the Letter of Credit, all as provided in this Section.

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

9.1 Events of Default. The following (A) through (M) 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 30 days from delivery of the notice, Licensee will have the additional time, not in any event to exceed 30 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 or its contractors' 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 nonmaterial, 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 Location.

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 its 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 its 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. 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 Location and participation in future RFPs. 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 Location 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 Location in the same manner and with the same force and effect (except as to Licensee's liability and any provisions that survive termination) 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 Location, 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 Location, 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 Location 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 Location, Storage Area, and Additional Space if applicable 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, at Licensee's sole cost and expense, 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.

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 the City's remedies, nor create any limitation upon any right of the City under this Agreement to terminate this Agreement for any 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 Riverwalk 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 and to the Concession Management Representative.

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 Riverwalk, 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 5 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, 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, 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 Agreement, 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 Agreement, 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 Agreement 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 Municipal Code 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 Municipal Code Ch. 2-156, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in Municipal Code 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 Municipal Code Sec. 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 Municipal Code Sec. 2-156-030 by any elected official with respect to this Agreement will be grounds for termination of this Agreement. The term financial interest is defined as set forth in Municipal Code 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, gender identity, ancestry, sexual orientation, marital status, parental status, military status, source of income, credit history, 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, gender identity, ancestry, sexual orientation, marital status, parental status, military status, source of income, credit history 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, gender identity, ancestry, sexual orientation, marital status, parental status, military status, source of income, credit history 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, ancestry, gender identity, ancestry, sexual orientation, marital status, parental status, military status, source of income or credit history. 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 Riverwalk, or the exclusive or non-exclusive use of the Riverwalk 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 Agreement are employees or subcontractors of Licensee, not employees of the City of Chicago. This Agreement 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 Agreement, or offer employment to any individual to provide services under this Agreement, 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 Agreement, 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 Agreement. Licensee will also cooperate with any inquiries by OIG Hiring Oversight.

10.10 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, 2018 the Minimum Wage for all employees to be paid pursuant to Executive Order 2014-1 is \$13.80 per hour. 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, 2018, the amount to be paid when taking an allowance for gratuities, is \$7.45 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 or 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, sublicensee, 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.

## **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, including approval of Construction Documents, 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, and approved by the Budget Director and the Corporation Counsel (as to form and legality). 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 any way 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 5. All notices or communications from Licensee to the City must be addressed to:

City of Chicago  
Department of Assets, Information and Services  
2 N. LaSalle Street Suite 200  
Chicago, Illinois 60602  
Attn: Commissioner

and with a copy to: Deputy Commissioner of Asset Management 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  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602

Attn: Deputy Corporation Counsel, Real Estate Division

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 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 Chicago River, the Chicago Riverwalk, or the adjoining dockwalls, wharf areas, roadways and walkways. The City reserves the right, at its sole discretion, to further develop, improve, maintain, modify and repair the dockwalls, wharf areas, roadways and walkways connected to them at any time without interference or hindrance by the Licensee. This Agreement is subordinate to the provisions and requirements of any existing or future agreements between the City and the United States government or other governmental authority, pertaining to the development, operation or maintenance of the Riverwalk, including agreements the execution of which have been or will be required as a condition precedent to the granting of federal or other governmental funds for the development of the Riverwalk. If the United States government requires modifications, revisions, supplements or deletions of any of the terms of this Agreement, then Licensee consents to the changes to this Agreement.

B. To the extent of a conflict or inconsistency between this Agreement and any agreement described in paragraph A. above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraph A.

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 Riverwalk, 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 Riverwalk, or the Licensed Space, or (iii) repair or alteration of any part of the Riverwalk 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 follows.]

**SIGNATURE PAGE**

**CITY OF CHICAGO:**

By: \_\_\_\_\_  
Commissioner  
Department of Assets, Information and Services

Approved by:

\_\_\_\_\_  
Budget Director

Approved as to form and legality by:

\_\_\_\_\_  
Department of Law

**LICENSEE:**

\_\_\_\_\_ [Insert Licensee's legal name]

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

Name: \_\_\_\_\_

Its: \_\_\_\_\_ [Insert signatory's title]

STATE OF ILLINOIS       )  
  ) SS.  
COUNTY OF COOK       )

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, do hereby certify that \_\_\_\_\_ [insert name of Licensee's signatory], personally known to me to be the \_\_\_\_\_ [insert title] of \_\_\_\_\_ ("Licensee") [insert Licensee's legal name], a(n) \_\_\_\_\_ [insert type of entity, e.g., Illinois limited liability company or Illinois for-profit corporation], and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and, being first duly sworn by me, acknowledged that s/he signed and delivered the foregoing instrument pursuant to authority given by said Licensee, as her/his free and voluntary act and as the free and voluntary act and deed of Licensee, for the uses and purposes therein set forth.

GIVEN under my notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC



## EXHIBIT 7: SAMPLE USE AGREEMENT

### EXAMPLE

### USE AGREEMENT

This **USE AGREEMENT** (the “**Agreement**”) is made as of March 10, 2021 (the “**Effective Date**”), by and between the **CITY OF CHICAGO**, an Illinois municipal corporation and home rule unit of government (the “**City**”), acting by and through its Department of Assets, Information & Services, having its principal offices located at City Hall, 121 North LaSalle Street, Chicago, Illinois 60602, and XXX (“**Licensee**”), an Illinois limited liability company having its principal offices located at XXX.

### RECITALS

**WHEREAS**, the City is the owner of the Chicago Riverwalk located on the south bank of the main branch of the Chicago River (the “**Riverwalk**”); and

**WHEREAS**, Licensee is a successful respondent to the City’s RFQ Specification #XXXXXX dated Month, date, year and subsequent RFP Specification #XXXXX-XXXX dated XXX, to operate a concession on the Riverwalk; and

**WHEREAS**, the City and Licensee have entered into that certain Chicago Riverwalk Master Concession License Agreement, dated XXX, 2021 (the “**MCLA**”); and

**WHEREAS**, Licensee wishes to perform concession operations as further described in Exhibit A attached hereto (“**Services**”) in accordance with the terms and conditions of the MCLA and this Agreement, and the City has agreed to Licensee’s performance of the Services upon the terms and conditions set forth in the MCLA and this Agreement at the 45 East Riverwalk South (the “**Location**”). The Location is depicted in Exhibit B attached hereto; and

**WHEREAS**, the Services shall be limited to the Location and no other access or activity shall be permitted without prior written City consent;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Incorporation of Recitals.** The foregoing recitals constitute an integral part of this Agreement and are incorporated herein by this reference with the same force and effect as if set forth herein as agreements of the parties.

2. **Grant.** Subject to the terms and conditions set forth herein and the MCLA, which is incorporated by this reference, the City hereby grants to Licensee a license to the Location for

the sole purpose of allowing Licensee to perform the Services. The items that Licensee may sell from the Location and the prices at which such items may be sold are set forth in **Exhibit C** attached hereto. The Agreement granted hereunder extends to, and Licensee shall be responsible for, its agents, employees, contractors, subcontractors, consultants, invitees, guests, vendors, patrons and any other parties who enter the Location at Licensee's direction or with Licensee's consent (Licensee's agents, employees, contractors, subcontractors and consultants, collectively, "**Agents**"). Licensee shall be responsible for ensuring that all Agents comply with Licensee's obligations under this Agreement, and non-compliance by any Agent shall be deemed to be non-compliance by Licensee. This Agreement is subject to all easements, encroachments, covenants, restrictions of record and not shown of record, and any other title encumbrances or defects affecting the Location.

For convenience of reference only, a term sheet is attached hereto as **Exhibit D**. Such term sheet does not supersede, amend or modify any of the terms, covenants provisions or conditions set forth in the body of this Agreement or in its exhibits.

3. **Term.** The term of this Agreement ("**Term**") shall begin on the Effective Date and shall terminate on December 31, 2021. Prior to entering the Location, Licensee shall provide proof of insurance as required by Section 8 of this Agreement, and copies of any necessary permits or approvals as required under Section 6 of this Agreement.

4. **Cost.** Licensee shall be responsible for all costs and expenses associated with the Services without City reimbursement.

5. **Compliance with All Laws.** Licensee and its Agents shall comply at all times with any and all applicable municipal, county, state, federal or other statutes, laws (including common law), ordinances, codes, rules and regulations (collectively, "**Laws**"). Contract provisions that are required to be included in this Agreement by any such Laws shall be deemed included.

6. **Permits and Approvals.** Prior to entering the Location, Licensee must secure, or cause its Agents to secure, at its sole cost and expense, all necessary permits and governmental approvals, including any approvals needed from the Coast Guard and Harbor Master if applicable, required to perform the Services. Licensee understands that this Agreement shall not act as a substitute for any such permits or approvals that may be required. Licensee shall provide copies of all required permits and approvals to the City prior to entering the Location.

7. **Indemnification.** Licensee shall indemnify, defend (through an attorney reasonably acceptable to the City) and hold the City, its officers, officials, employees, agents and representatives (collectively, the "**City Parties**"), harmless from and against any and all actions, claims, suits, complaints, demands, legal or administrative proceedings, losses, damages, debts, liens, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, attorneys' fees, consultants' fees and court costs) (collectively, "**Claims**"), of whatsoever kind and nature, including without limitation, any and all environmental Claims occurring in connection with or arising out of the Services, made or asserted by any third parties for injury, including personal

injury or death of any person or persons, and for loss or damage to any property, occurring in connection with, or in any way arising out of or incident to (a) any and all acts or omissions, or alleged acts or omissions of Licensee, its Agents or any other person entering the Location at Licensee's direction and/or on Licensee's behalf during the Term and (b) any entry upon or use of the Location or performance of the Services by or on behalf of Licensee or its Agents and (c) the failure of Licensee or its Agents to pay contractors, subcontractors or material suppliers in connection with this Agreement. The indemnification provided herein will be effective to the maximum extent permitted by Law and is not limited by any amount of insurance required under this Agreement. If the Services include construction work, then Licensee's duty to indemnify the City shall be limited in accordance with the Construction Contract Indemnification for Negligence Act (740 ILCS 35/0.01 et seq.).

Licensee shall be solely responsible for the defense of any and all Claims against the City Parties pursuant to the foregoing Licensee indemnity obligation, including without limitation, claims by any Agent of Licensee. The City shall have the right, at its sole option, to reasonable consultation in connection with the defense of any such Claims, without relieving Licensee of its obligations hereunder.

Licensee shall promptly provide, or cause to be provided, to the City of Chicago, Department of Law, 121 N. LaSalle Street, Room 600, Chicago, IL 60602, copies of such notices as Licensee may receive of any Claims for which the City Parties are entitled to indemnification hereunder and to give the City Parties authority, information, and assistance for the defense of any such Claims.

This Section 7 shall survive the expiration or termination of this Agreement (regardless of the reason for such termination).

8. **Insurance.** The insurance requirements are set forth in Exhibit E attached hereto.

9. **Inspection and Work.** Licensee agrees to carefully inspect, or cause its Agents to carefully inspect, the Location prior to commencing any activities on the Location to ensure that such activities will not damage the Location or any surrounding Location, structures, utility lines or subsurface lines or cables. Licensee and its Agents shall take all reasonable safety precautions to ensure that the Services will not pose a danger to the public or have a negative impact on the neighboring community, including, without limitation, adequately securing the Location throughout the Term. Licensee and its Agents shall perform the Services in a good and workmanlike manner with due care and diligence, and in accordance with all applicable Laws. Licensee and its Agents shall keep the Location and any adjoining sidewalks and streets free of debris and materials and generally in a clean and safe condition throughout the Term. Licensee and its Agents shall limit their activities to those reasonably necessary to perform the Services. The City reserves the right to inspect the Services throughout the Term. Neither Licensee nor its Agents shall conduct any activity on the Location that may in any manner injure the health, safety and welfare of the public, diminish the value of the Location or the Riverwalk, interfere with City operations, or violate any Laws, including, without limitation, any Environmental Laws (as hereinafter defined).

10. **Obligation to Restore the Location.** Upon completion of the Services, Licensee shall promptly restore the Location to the same or better condition existing as of the Effective Date. Licensee shall remove all personal property, trash, wastes and debris placed on the Location by Licensee or its Agents. Licensee shall dispose of all trash, wastes and debris in accordance with all applicable Laws, including without limitation, all applicable Environmental Laws (as hereinafter defined). Any personal property, trash, wastes or debris left by Licensee on or about the Location shall be considered abandoned and may be disposed of in the City's sole discretion. Licensee agrees to pay for any removal or disposal costs the City may incur with respect to this Agreement. The City shall be reimbursed for all sums it pays in connection with this Agreement. Such reimbursement shall occur within fifteen (15) days of such City payment, with interest accruing from the date of such City payment at the rate of 12% per annum. Licensee shall be responsible for any damage to the Location or any surrounding location, structures, utility lines or subsurface lines or cables caused by the acts or omissions of Licensee or its Agents, including but not limited to, vandalism or misuse of the Location, and shall undertake any repairs necessitated by such acts or omissions. This Section 10 shall survive the expiration or earlier termination of this Agreement.

11. **No Liens.** Licensee shall not cause or permit any lien or encumbrance, whether created by act of Licensee or its Agents, operation of law or otherwise, to attach to or be placed upon the City's title or interest in the Location. In case of any such lien attaching, Licensee shall immediately pay and remove such lien. If Licensee fails to pay and remove any lien, the City, at the City's election, may, but is not obligated to, pay and satisfy same, and all sums so paid by the City shall be reimbursed by Licensee within fifteen (15) days of such payment with interest from the date of payment at the rate of 12% per annum.

12. **Reports.** Licensee agrees to promptly deliver to the City copies of all reports, surveys, field data, correspondence and analytical results prepared by or for Licensee regarding the condition of the Location if such documentation is prepared as part of the Services. Licensee agrees to promptly deliver to the City copies of all financial reports throughout the term and an end of term financial report due no later than thirty days after the end of the Term.

13. **No Representations or Warranties; Release of City Parties.** The City makes no warranties or representations, express or implied, of any kind, as to the structural, physical or environmental condition of the Location or the suitability of the Location for any purpose whatsoever including, but not limited to, the Services. Licensee, on behalf of itself and its Agents, agrees to enter upon the Location in the Location's "as is," "where is" and "with all faults" condition and at Licensee's own risk. Licensee, on behalf of itself and its Agents, acknowledges that it is relying solely upon its own inspection and other due diligence activities and not upon any information (including, without limitation, environmental studies or reports of any kind) provided by or on behalf of the City or any of the City Parties with respect thereto. Licensee, on behalf of itself and its Agents, hereby releases, relinquishes and forever discharges the City and all City Parties from and against any and all Claims that Licensee or any of its Agents now have or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, based upon, arising out of or in any way connected with, directly or indirectly, (a) the structural or physical condition of the Location, (b) any easements, encroachments, covenants, restrictions of record and

not shown of record, and any other title defects; and (c) any entry upon or use of the Location by or on behalf of Licensee or its Agents.

14. **Right to Terminate.** Notwithstanding anything to the contrary contained herein, either party may terminate this Agreement for any reason upon prior written notice of at least five (5) but up to ninety (90) days to the other party. In addition, in the event of any material breach of this Agreement by Licensee the City shall provide Licensee with prior notice and a reasonable opportunity to cure any such breach or obligation hereunder, and thereafter the City shall have the right to order Licensee to immediately cease all activities on the Location and to immediately vacate the Location until such breach is cured or the City may immediately terminate this Agreement and pursue any and all remedies available at law or in equity. The City also reserves the right to terminate this Agreement pursuant to Section 26 hereof.

15. **Amendment.** This Agreement may not be amended, extended or modified without the written consent of all of the parties hereto.

16. **Captions.** The section headings in this Agreement are inserted for convenience of reference only and shall not in any way affect the meaning or construction of the Agreement.

17. **Entire Agreement.** This Agreement embodies the entire agreement and understanding between the parties and supersedes any prior oral or written agreements with respect to the matters stated herein.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original instrument and all of which together shall constitute one and the same instrument. A facsimile, electronic, or photocopy signature shall have the same legal effect as an original signature.

19. **No Other Rights.** This Agreement does not give Licensee any other right with respect to the Location, including, but not limited to, closure of the Riverwalk or streets, or use of equipment, sidewalks or other public thoroughfares. Any rights not specifically granted to Licensee by and through this Agreement are reserved exclusively to the City.

20. **No Further City Obligations.** The execution of this Agreement does not obligate the City or the City Parties to provide Licensee or Licensee's Agents with any other assistance. Without limiting the generality of the foregoing, the City shall not provide any security, maintenance, or custodial services that may be required by Licensee to undertake the Services on the Location.

21. **Security; Full Liability.** Licensee assumes all legal and financial responsibility and liability for any and all uses of the Location by Licensee or Licensee's Agents. Licensee shall be responsible for properly securing and safeguarding Licensee's personal property. Licensee acknowledges that the City has no security responsibilities with respect to Licensee's personal property under this Agreement. This Section 21 shall survive the expiration or earlier termination of this Agreement.

22. **No Principal/Agent or Partnership Relationship.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third party as creating the relationship of principal and agent or of partnership or of joint venture between the parties hereto.

23. **No Drugs.** Licensee agrees that no illegal drugs of any kind or nature shall be sold, given away, or consumed on the Location by Licensee or its Agents.

24. **Alcohol.** The sale of alcohol will be allowed in accordance with the Terms and Conditions of the Chicago Riverwalk Liquor License Ordinance, subject to the prior written approval of the Commissioner of the City's Department of Fleet and Facility Management.

25. **Coordination and Oversight.** Licensee shall coordinate with the Department of Fleet and Facility Management for access to the Location in order to undertake the Services. Licensee acknowledges that any assistance or oversight provided by the City with respect to the Services shall be provided at the City's sole and exclusive discretion and convenience.

26. **City Use Paramount.** Licensee shall refrain from undertaking any activities that interfere with the City's use of the Location as determined by the City in its sole discretion. The City reserves the right to terminate Licensee's use of the Location at any time in the event such use interferes with the City's use of the Location or the Riverwalk, public safety, or with any other municipal purpose or interest, as determined by the City in the City's sole discretion. Licensee acknowledges that Licensee's access to the Location shall at all times be subordinate to City operations.

27. **Time is of the Essence.** Time is of the essence for all obligations and deadlines contained in this Agreement.

28. **Assignment.** This Agreement may not be assigned by Licensee.

29. **Exhibits.** All exhibits referred to herein and attached hereto shall be deemed part of this Agreement.

30. **Non-Discrimination.** Licensee shall not discriminate against any person in connection with its use of the Location or the provision of the Services based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 *et seq.*

31. **Severability.** If any provision of this Agreement is deemed to be unenforceable by any court of competent jurisdiction, it shall not affect the enforceability of any other provision.

32. **Governing Law; Consent to Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the State of Illinois without reference to its conflicts of laws principles. Licensee waives any objection to the venue of any action filed in any court situated in the jurisdiction in which the Location is located.

33. **Licensee's Authority.** Licensee represents, warrants and covenants that it is duly organized, validly existing and qualified to do business in Illinois; that it has the right, power and authority to execute and deliver this Agreement and to perform its obligations hereunder; that the person signing this Agreement on behalf of Licensee has the authority to do so; and that this Agreement shall be binding upon and enforceable against Licensee in accordance with its terms.

*(Signature Page Follows)*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the Effective Date.

**CITY OF CHICAGO**,  
an Illinois municipal corporation and home rule unit of government

By: \_\_\_\_\_  
Commissioner  
Department of Assets, Information & Services

Approved by:

\_\_\_\_\_  
Budget Director

Approved as to form and legality by:

\_\_\_\_\_  
Department of Law

**LICENSEE:**

\_\_\_\_\_ **[Licensee]**

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

Print Name: \_\_\_\_\_

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