

CITY OF CHICAGO
DEPARTMENT OF ASSETS INFORMATION & SERVICES
REQUEST FOR PROPOSAL TO OPERATE CONCESSIONS ON
THE CHICAGO RIVERWALK

SPECIFICATION 1256775
OCTOBER 18, 2022

The City of Chicago ("City") Department of Assets Information and Services ("AIS" or "Department") hereby issues this request for proposal ("RFP"), inviting the submission of proposals from food and beverage, retail, recreational, cultural and educational businesses, partnerships or LLC's with the qualifications and expertise necessary to operate a concession on the Chicago Riverwalk.

For the purposes of this RFP, "Commissioner" refers to the Commissioner of AIS. "Respondents" or "Proposers" mean the entities who submit responses to this RFP. The documents submitted will be referred to as "Proposals."

The City intends to award agreements ("License Agreement(s)") to successful Respondents ("Licensee" or "Operator") for available spaces ("Locations") this year. The term for the agreement is for three (3) years with one possible two (2) year extension. The City currently intends to award one License Agreement for each available Location. Respondents may submit proposals for single or multiple Locations. Riverwalk maps and site descriptions of the Locations are shown in Attachment A to this RFP.

Proposals shall be submitted as a PDF and formatted on 8½" x 11" letter size paper in order to be considered for the award of a License Agreement. A table of contents or tabs identifying the requirements with the same sections and numbering scheme as listed below should be utilized to organize the response. Proposals not containing the information as requested may be deemed incomplete. A redacted PDF must also be provided and must be labeled "Redacted Proposal." Proposals should be emailed to chicagoriverwalk@cityofchicago.org

PROPOSALS SUBMITTED IN RESPONSE TO THIS RFP WILL BE ACCEPTED UNTIL:
DECEMBER 2, 2022
AT 12:00 P.M. CENTRAL TIME

LATE PROPOSALS MAY NOT BE CONSIDERED FOR SELECTION.

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Please read the following instructions carefully.

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NOTE: All dimensions and configurations shown in Attachment A are approximate and subject to change.

A. THE CHICAGO RIVERWALK

1. Overview

The Riverwalk is a 1.25-mile-long path adjacent to the south bank of the Main Branch of the Chicago River which enhances residents' and visitors' enjoyment of Chicago. The Department envisions a mix of recreational, entertainment, food and beverage and retail facilities on the Riverwalk, creating a vibrant area to be enjoyed by residents, tourists, and visitors alike. It runs parallel to Wacker Drive from Lake Street to Lake Shore Drive. Attachment A shows Locations that will be available for the operations of concessions pursuant to this RFP. The Riverwalk has distinct "districts" that describe and define the character of the space.

The Esplanade District This district of the Riverwalk extends from Lake Shore Drive to Michigan Avenue. It includes the connection to the Lake Front Trail at Lake Shore Drive. It is a pedestrian path surrounded by landscaping with a few concessionaires including Urban Kayaks, Island Party Hut and Boat, the Northman Beer & Cider Garden and Chicago's First Lady Cruises. It neighbors the Lake Shore East community which has many residents. This district is not included in this RFP.

The Civic District

This district is the heart of the Riverwalk and connects the Esplanade District at Michigan Avenue to State Street. Within this District is the Michigan Avenue bridge. The McCormack Bridge House and Chicago River Museum operated by the Friends of the River is within the southwest tower of the Michigan Avenue bridge house. This district also includes the Vietnam Veterans Memorial Plaza between Wabash and State Streets. Current vendors include The Beat Kitchen, O'Brien's Riverwalk Café, Chicago Brewhouse and the Community Marketplace vendors; ChiBoys, Neighborly, Freddie's, Feed Your Face, Chiya Chia and Colores Mexicanos. The locations currently occupied by O'Brien's and Brewhouse are included in this RFP.

The Arcade District

The section of Riverwalk from State Street to Franklin is referred to as the Arcade District. This section was constructed by the Chicago Department of Transportation between 2014 through 2016. Each block was designed to reflect various river typographies named; the Marina, the Cove, the River Theater, the Water Plaza, the Jetty. The stretch is more modern and urban than the Esplanade or Civic Districts. This new addition has energized the Civic and Esplanade Districts and brought a great deal of positive attention to the Chicago Riverwalk as a whole. Current vendors include City Winery, Tiny Tapp & Café, Chicago Water Taxi, Sweet Home Gelato, Downtown Docks, Chicago Electric Boat Company and Chicago Cycleboats. Boat docking only at the Marina, River Theater, and Water Plaza are the only locations included in this RFP.

The Confluence District

The area between Lake Street and Franklin is known as the confluence where the Main, North and South and Branches of the Chicago River meet. This district is not included in this RFP.

The Concession Program on the Chicago Riverwalk has been very successful. Below are yearend revenues generated from Concession Program vendors since 2018. Note, there were social distancing and other Covid 19 operating restrictions in 2020. 2021 had the largest revenues since AIS took responsibility for the Chicago Riverwalk Concession Program in 2015.

	2018			2019			2020			2021		
Vendor	Total Revenue	Taxes	Gross Sales	Total Revenue	Taxes	Gross Sales	Total Revenues	Taxes	Gross Revenues	Total Revenue	Taxes	Gross Sales
Urban Kayaks	\$ 680,764.25	\$ 56,211.75	\$ 624,552.50	\$ 661,315.84	\$ 54,645.83	\$ 606,670.01	\$ 1,178,387.72	\$ 4,338.04	\$1,174,049.68	\$ 1,717,364.92	\$ 3,654.58	\$1,713,710.34
Island Party Hut	\$2,044,314.20	\$ 204,573.30	\$1,839,740.90	\$ 1,119,291.63	\$ 117,285.94	\$ 1,002,005.69	\$ 508,897.90	\$ 57,119.81	\$ 451,778.09	\$ 1,410,604.27	\$ 165,762.83	\$1,244,841.44
Northman	\$ 196,938.80	\$ 20,303.88	\$ 176,634.92	\$ 1,057,183.48	\$ 108,581.70	\$ 948,601.78	\$ 507,974.12	\$ 53,404.99	\$ 454,569.13	\$ 1,964,375.32	\$ 204,997.90	\$1,758,522.42
Beat Kitchen	didn't open until 2020						\$ 646,268.00	\$ 65,352.00	\$ 580,916.00	\$ 2,630,514.00	\$ 266,029.00	\$2,364,485.00
O'Briens	\$2,065,185.85	\$ 215,729.50	\$1,849,456.35	\$ 1,540,493.61	\$ 159,838.92	\$ 1,380,654.69	\$ 599,108.84	\$ 63,184.87	\$ 535,923.97	\$ 2,056,413.36	\$ 216,497.97	\$1,839,915.39
Chicago Brew House	\$ 857,307.87	\$ 87,049.30	\$ 770,258.57	\$ 2,133,995.00	\$ 220,556.01	\$ 1,913,438.99	\$ 1,107,612.56	\$116,125.06	\$ 991,487.50	\$ 3,758,090.57	\$ 392,800.20	\$3,409,528.17
City Winery	\$5,438,646.30	\$ 544,740.72	\$4,893,905.58	\$ 5,612,441.05	\$ 562,946.10	\$ 5,049,494.95	\$ 1,565,063.35	\$164,681.76	\$1,400,381.59	\$ 3,810,354.26	\$ 369,522.91	\$3,420,663.25
Tiny Tapp	\$2,313,130.72	\$ 235,904.86	\$2,077,225.86	\$ 3,032,012.67	\$ 310,046.44	\$ 2,721,966.23	\$ 699,684.86	\$ 81,101.31	\$ 618,583.55	\$ 2,402,020.66	\$ 250,089.18	\$2,151,931.48
Chicago Water Taxi	\$ 42,127.30		\$ 42,127.30	\$ 59,687.50		\$ 59,687.50	closed			\$ 1,078,668.75		\$1,078,668.75
Chicago Duffy- Downtown Docks, Chicago electric boats	\$ 636,420.30	\$ 58,935.59	\$ 577,484.71	\$ 944,118.86	\$ 87,874.94	\$ 856,243.92	\$ 668,454.89	\$ 54,016.22	\$ 614,438.67	\$ 1,473,307.81	\$ 115,336.65	\$1,357,971.16
Chicago Riverwalk Ventures- Sweet Home Gelato	\$ 120,348.81	\$ 12,533.32	\$ 107,815.49	\$ 389,023.95	\$ 40,271.54	\$ 348,752.41	\$ 138,164.24	\$ 14,349.12	\$ 123,815.12	\$ 363,917.62	\$ 38,086.57	\$ 325,831.05

The goal of this RFP is to receive proposals from qualified teams who can operate food and beverage, retail, recreational, entertainment, cultural and educational facilities along the Chicago Riverwalk. Examples of possible concessions include but are not limited to: sporting and recreational amenities; food and beverage; retail, particularly of a cultural or environmental nature; entertainment venues showcasing local talent; or any other type of family-friendly concessions. The Department encourages Respondents to propose other ideas to enhance the use and enjoyment of the Riverwalk and Chicago River that are family friendly, aligned with the Riverwalk Guidelines and establish the Riverwalk as a downtown destination. Operation of boat docking will be allowed in specified locations.

2. Concession Opportunity Locations

Opportunities for the operations of concessions are available at the following Locations:(See, Attachment A for greater detail).

- **45 East Riverwalk South**
- **35 East Riverwalk South**
- **11-27 West Riverwalk South (boat docking only)**
- **105 East Riverwalk South (boat docking)**
- **151-155 West Riverwalk South (boat docking only)**

Existing License Agreements are in place for the above Locations and expire this year. A storage area is adjacent to 35 East Riverwalk, in 31 East Riverwalk. Lower Wabash and Lower Wacker is designated as loading area for the Civic and Arcade Districts of the Chicago Riverwalk.

Civic District Opportunities:

45 East Riverwalk South (East of the Wabash Bridge)

The area immediately east of the Wabash Bridge has approximately 11,315 square feet of developable space that includes 6,057 square feet of exterior plaza space for outdoor dining and 5,258 square feet of space beneath upper Wacker Drive. Historically it has been the location of a food and beverage vendor, but other uses would be considered. This site was completed during East-West Wacker Reconstruction in 2001 and added to again in 2009 with the Wabash underbridge project. It is adjacent to Lower Wacker drive delivery access. Proposals for this site must include required square footage, a site design plan, and a list of operational requirements. Full service food and beverage operations in this Area must make allowance for sanitary facilities

in order to comply with the Department of Health code. This location also has a significant plaza area that could be used for entertainment venue with food and beverage.

35 East Riverwalk South & 376 North Wabash (West of the Wabash Bridge)

The area immediately west of the Wabash Bridge was built as part of the Vietnam Veterans Memorial in 2005. There is approximately 6,113 square feet of interior space available on the Riverwalk level and space available in the plaza above. This space also has a small plaza right in front of the space on the Riverwalk level and is adjacent to Lower Wacker Drive delivery access. This site was intended to connect to the upper plaza by elevator, so a structure was constructed as part of the Wacker Drive Reconstruction to house an elevator as well as a waiting station to service outdoor seating on the Upper West Wabash plaza. However, the elevator was never installed. Proposals for this Location that also include activating the Upper Wabash plaza would be well received. Proposals including installation of an elevator in this structure will be accepted.

The existing vendor made site improvements including a full kitchen. Licensees located in the Arcade District of the Riverwalk must have access to the Loading Area and their storage space located at 31 East Riverwalk South. Proposals for 35 East Riverwalk South must take this into account. Proposals for this site must include required square footage, a site design plan, and a list of operational requirements.

Modifications to the existing build-out of this Location may be proposed.

The Arcade District Opportunities-

The Marina Plaza Seawall only: 11-27 West Riverwalk South (State to Clark)

BOAT DOCKING ONLY

The area between State Street and Dearborn Street is the connection between the formal Vietnam Veteran's Memorial and the Riverwalk to the west. This is the only location where hourly boat docking operations will be considered. The existing food and beverage vendor has an active license agreement and the interior and plaza space is not included in this RFP. Coordination between the existing vendor and Respondent is required. Proposals should be submitted with ideas to activate the seawall by providing boat docking concessions. A strong security plan should be included in the Proposal as well as a clearly explained safety plan dealing with boating.

The River Theater: 105 West Riverwalk South (Clark to LaSalle)

The River Theater is currently the location licensed to Chicago Water Taxi. Commercial boat docking at this location can be proposed for this site. Proposals should include a queueing plan for guests waiting to board the vessels. The site has space constraints and large groups of people need to be organized and queued in such a way as to keep the path clear for public access. A build-out of a ticketing kiosk and decking over the stairs adjacent to the water can be proposed. The River Theater is an amphitheater like design. Rather than traditional commercial boating operations, Respondents can also propose a floating food and beverage venue including a stage to host performances for people sitting on the steps of the River Theater. A food and beverage component can also be included as a revenue source. It is critical that the path remains publicly accessible and public safety is considered, especially to prevent people from falling into the river.

The Water Plaza- Seawall only: 151-155 West Riverwalk South

BOAT DOCKING ONLY

The current Licenses of the Water Plaza is Downtown Docks, Chicago Electric Boat Company and Chicago Cycleboats. The existing food and beverage vendor has an active license agreement and

the interior and plaza space is not included in this RFP. Coordination between the existing vendor and Respondent is required. Proposals should be submitted with ideas to activate the seawall by providing boat docking concessions. It is critical that the path remain open and publicly accessible. A strong security plan should be included in the Proposal as well as a clearly explained safety plan dealing with boating.

3. Responsibilities

Licensee/Operator

The selected Licensee(s) will assume complete responsibility for the development and operations of their Location(s) on the Riverwalk. These responsibilities may include, but are not limited to the:

- A. Operation of restaurant or facility
 - a. Procure and keep current all required local, state, and federal permits, licenses and certifications for the cooking, dispensing, handling, preparation, presentation, sale, services, and storage of food, beverages, (alcoholic and non-alcoholic), and merchandise
 - b. Cook, dispense, handle, prepare, present, purchase, receive, sell, store, and transport all food, beverages (alcoholic and non-alcoholics), and merchandise
 - c. Procure and keep current insurance required to handle, sell, serve, and store beer, wine and liquor.
 - d. Maintenance-cleaning, repairing, maintaining and replacing all:
 - i. Doors (exterior and interior)
 - ii. Floors
 - iii. Furniture, fixtures and equipment
 - iv. Electrical systems
 - v. Exteriors walls, finishes and attached elements (e.g. awnings, canopies, lighting etc)
 - vi. Fire and life safety systems
 - vii. Interior walls, partitions and finishes
 - viii. Lighting
 - ix. Mechanical systems
 - x. Plumbing infrastructure and fixtures in all areas within Location
 - xi. Security systems
 - xii. Telecommunications
 - xiii. Utilities
 - xiv. Windows and glass (exterior and interior)
 - xv. Other interior elements and infrastructure
 - e. Custodial service
 - i. Keeping Location in a clean, safe, and attractive condition at all times
 - ii. Cleaning all areas within the Location, including washrooms
 - iii. Cleaning all signage
 - iv. Replacing all light bulbs within Location
 - v. Debris, dirt, garbage, litter, trash, and waste removal, including debris, dirt and waster that migrates from the location to the public path
 - vi. Proper collection, storage, disposal, and recycling of waste
 - vii. Pest control
 - viii. Power washing
 - ix. Graffiti removal

- x. Supplying and replenishing all washrooms and with soap, soap dispensers and paper products and doing the same in any other area where these items may be uses (e.g. kitchen, locker room, etc)
 - f. Landscaping- purchase, maintain, and replacement within the Location
 - g. Furniture, Fixtures and Equipment (FF&E)
 - i. Purchase, storage, maintain, repair and replacement
 - ii. All FF&E will remain property of the Operator
 - iii. Includes, but is not limited to all FF&E used for:
 - 1. Cooking, dispensing, holding, preparing, presenting, receiving, selling, serving, storing, and transporting all food and beverages (alcoholic and non-alcoholic)
 - 2. Holding, presenting, receiving, selling, storing and transporting merchandise
 - 3. Washing equipment
 - 4. All inventory and point of sale equipment
 - 5. Security and surveillance
 - 6. PCs and other office equipment
 - 7. Cabinets, chairs, (dining and office) display cases, filing cabinets, host/hostess stands and tables
 - 8. Dishware, glassware, service ware and utensils
 - h. Utilities- installation, maintenance, monthly service fees and any other fees associated with all utilities including
 - i. Cable television
 - ii. Electricity
 - iii. Fire and life safety systems
 - iv. Gas
 - v. Internet
 - vi. Security systems
 - vii. Sewer (including drains and grease traps)
 - viii. Telecommunications
 - ix. Water
 - x. Wi-Fi
 - i. Security personnel as necessary to secure location equipment, staff and guests
 - j. Installation, purchase, maintenance, repair, replacement, and storage of
 - i. Signage (e.g. attached to the exterior walls, not attached to the exterior walls, stickers on glass etc.) All signage must be pre-approved by the Department.
 - ii. Menu boards
 - iii. Exterior decorations, displays, and other accessories (e.g. holiday displays, strings of exterior lighting, etc)
 - iv. All signage, menu boards and exterior decoration, displays and other accessories must be approved by the Commissioner
- B. Audits and Records
 - a. Audits: On an annual basis, prepare and provide to the City a year-end balance sheet, statement of profit or loss, and statement of cash flows for the preceding fiscal year. This audit will also include a certification of operating revenues and expenses, and net operating income for that fiscal year. This information will be delivered to the City no later than March 1 of the following year and will be prepared in accordance with GAAP.

This information must be accompanied by an independent auditor's report prepared by an independent certified public accountant licensed by the State of Illinois. In addition, provide to the City internal auditor all books, records, procedure manuals, etc. when requested.

- b. Records: The Operator, its vendors, subcontractors and affiliates shall keep records relating to their operation of the Location. All records will be made available to the City upon request.
- C. Accounting
 - a. Maintain full, accurate, and complete financial and accounting books, records and reports regarding the design, build-out, and operation of the Location. Maintain all records and accounting in accordance with GAAP.
 - b. Financial calendar is (January 1- December 31)
 - c. All financial and accounting books, records, and reports will be made available to the City within 15 days of request
- D. Reporting
 - a. Keep current and accurate reports regarding the design and build-out of the restaurant and concession kiosk
 - b. Keep current and accurate reports regarding the operation of the concession
 - c. All reports will be made available to the City within 15 days of request
 - d. Monthly revenues reports are required during the season.
- E. Personnel
 - a. Select, hire, train, furnish, deploy, discipline, discharge, and supervise all employees, agents, subcontractors, and independent contractors deemed necessary or advisable by the Operator in order for the Operator to perform the services. Also, the Operator will assume full responsibility for the actions of all personnel and shall be solely responsible for their supervision, daily direction and control, remuneration, severance pay and claims, withholding taxes, insurance, social security licenses, and all other actions related to the Operator's services. Further, all personnel provided by the Operator will be deemed to be employees of the Operator and will not for any purpose considered employees of the City.
 - b. Comply with all applicable laws concerned with the hiring and employment of personnel, including the Federal and State of Illinois Equal Employment Opportunity Regulations, and the prevailing wage rate statutes.
 - c. Perform background checks on all employees including criminal background checks, a check against the national sex offender database, fingerprinting, and such other checks as may be required by applicable law.
 - d. All personnel records, reports and background checks will be made available to the City within 15 days of request

Role of The City

The City intends to award a License Agreements for each Location. 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. Site Improvements criteria and construction Procedures for the Location(s) are explained in Attachment E.

- A. Maintenance and repair of:
 - a. The Riverwalk pathway
 - b. Riverwalk landscaping
 - c. Stairway between the Riverwalk and Upper Wacker Drive
 - d. Public restrooms
 - e. Public seating areas

- f. Fountains
- g. Path lighting
- h. Storage area at Wabash
- i. Parking at Wabash
- B. Snow removal and de-icing of the path and stairways
- C. Not unreasonably withholding any required approvals
- D. Flood clean-up and restoration
- E. Trash in common areas

B. SUBMISSION, SELECTION AND CONTRACTING PROCEDURES

Respondents who are able to demonstrate experience and expertise in the operations of concessions that provide food and beverage, retail, recreational, cultural, or educational services are encouraged to respond to this RFP. Respondents that include significant capital improvements must also demonstrate their experience with the design and construction of concession space. Respondents should explain how they will design and if applicable, build out the Location and how the services being offered will create desire for people to visit the Riverwalk.

1. Schedule

The City has adopted the following schedule for the submittal of Proposals in response to this RFP:

October 18, 2022	Advertise RFP
November 2, 2022	Pre-submittal Meeting
November 7, 2022	Deadline for written questions by 4:00 p.m., Central Time
December 2, 2022	Due Date for proposals at 12:00 p.m., Central Time

2. Proposal Due Date and Time

Proposals shall be submitted as a PDF and formatted on 8½" x 11" letter size paper in order to be considered for the award of a License Agreement. Respondents must submit their Proposals no later than **12:00 p.m. December 2, 2022**, submit proposal via e-mail to: ChicagoRiverwalk@cityofchicago.org. Subject: Proposal: RFP to Operate Concessions on The Chicago Riverwalk Specification No. 1256775. Late proposals may not be considered for selection.

3. Proposal Submittal Delivery

Proposals shall be submitted as a PDF and formatted on 8½" x 11" letter size paper in order to be considered for participation. A table of contents or tabs with the same sections and numbering scheme as listed below should be utilized to organize the response. Proposals not containing the information as requested in this section may be deemed incomplete. A redacted PDF must be provided and must be labeled "Redacted Proposal." The original proposal must be clearly marked "Original." Proposals should be emailed to chicagoriverwalk@cityofchicago.org

4. Transparency

Consistent with the City's practice of making available all information submitted in response to a public procurement, all proposals, 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 or upon request.

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

To designate portions of the Proposal as confidential, Respondent must:

1. Mark the cover page as follows: **"This Proposal includes trade secrets or other proprietary data." 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.**
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 Proposal."**
3. Provide a redacted copy of the entire Proposal 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 CD-ROM or flash drive with a redacted copy may result in the posting of an un-redacted copy.

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

All Proposals 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.

5. Pre-Proposal Meeting

The Department will conduct a Pre-Proposal meeting on November 2, 2022, **at 2 North LaSalle Street Mezzanine Level, at 10 AM central time.** All interested parties are welcome to attend and registration is required. City representatives will describe the program and answer questions that were emailed prior to and during the pre-proposal meeting. Respondents are to rely solely upon this RFP and any subsequent addenda in preparing their proposals; statements made at the Pre-Proposal meeting are not binding upon the City. The City also strongly encourages Respondents to visit the Riverwalk prior to attending the Pre-Proposal conference. Register to attend the pre-proposal meeting by emailing your name, name of your business, and telephone number to chicagoriverwalk@cityofchicago.org. The deadline to register is 4:00 p.m. cst on November 1, 2022. A confirmation email will be sent including the name of the specific conference room.

Interpretation and Questions Regarding the RFP

Attendance at the Pre-Proposal meeting is not mandatory. Should you require an interpretation or clarification of the RFP outside of the pre-proposal meeting, you must submit your question(s) via e-mail to: ChicagoRiverwalk@cityofchicago.org with the Subject: Request for Proposals Spec #1256775.

Only e-mailed questions will be accepted and questions must be submitted prior to November 7, 2022. Written answers to the questions, as well as any clarifications, interpretations, or changes to the RFP, will be provided in one or more addenda to the RFP. Addenda will be transmitted directly to Respondents that have registered as holders of this RFP.

Project Registration

Register by sending contact information to 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 RFP. You must register in order to receive answers to written questions and any addenda that may be submitted for the RFP.

6. City's Right to Cancel, Reject or Reissue this RFP

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 RFP 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 RFP.

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

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 Proposal, 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. A contract will not be awarded until the City has completed such assessment and verification. By submitting its Proposal, Respondent agrees to permit and cooperate with any such assessment and verification.

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 Proposal. The City will determine the dates and times of such interviews and Respondents will be given reasonable notice.

9. Costs of Proposals

All costs incurred by Respondents in preparation of its Proposal 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 RFP.

10. Ownership of Proposals

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.

11. Award and Execution of a Contract

The City intends to enter into a License Agreement with a qualified and responsible Respondent who, in the City's sole judgment, provides the best overall Proposal for a particular location. The City is not required to select the Proposal with the highest projected compensation to the City. The City will select a Proposal based on all factors as described in Section E. Evaluation Criteria.

All timely responses to this RFP will be reviewed and evaluated by an evaluation committee appointed by the Commissioner, which will recommend to the Commissioner Respondent(s) for tentative award of a contract. Upon the Commissioner and Budget Director's concurrence, Commissioner has the authority by City Council to execute one or more License Agreements.

12. Disclaimer

The information contained in this RFP, 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 RFP 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.

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.

C. KEY BUSINESS TERMS AND GENERAL CONDITIONS

1. Term of Concession Operations

A three-year term with one possible two-year extension is available for Locations. Submissions with longer terms proposed will not be considered.

The City intends to award the contracts as quickly as possible to allow site modifications and preparation projects to allow operations to begin in May 2023.

2. 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 License Agreement. The Concession License Fee means all amounts payable by selected Respondent as set forth in the License Agreement, including but not limited to the Minimum Annual Guarantee and the Supplemental Revenue Fee.

Minimum Annual Guarantee (“MAG”)

The MAG is the total annual amount proposed to be paid to the City for the year by the Respondent for use of the necessary space on the Riverwalk for its operations, which will be paid in installments during the term of the License. Respondent is required to propose a MAG based upon a dollar amount per square foot for use of the Location or provide an explanation on how the Minimum Annual Guarantee being proposed was derived. MAG will be due quarterly.

Supplemental Revenue Fee

The Supplemental Revenue Fee is in addition to the MAG and should be expressed as percentage of gross revenues generated from the Location. The actual compensation and calculations thereof are based on the selected Respondent’s Proposal and are subject to negotiation as further described below.

The percentage will be applied to the actual annual gross revenues for the Location and shall be calculated annually and paid to the City by January 31 of the following year, allowing time to calculate the annual gross revenues. In the Proposal, the Respondent must include an explanation of how the specific gross revenues were estimated for the Location.

License Agreements will require the Licensee to provide a certified financial statement each year to verify the annual gross revenue and the corresponding Supplemental Revenue Fee due. The last installment of the Supplemental Revenue Fee would then be paid upon final invoicing by the City. Proposals that include year-round operations will be required to provide a certified financial statement from a CPA no later than February 15 for each year of the license agreement. These dates can be negotiated for the License Agreement; however, the City prefers to finalize the end of year accounting and receive the Concession License Fees prior to December 31 of each year in order to be compliant with reporting requirements of the federal government.

The MAG and Supplemental Revenue Fee must be proposed, either typed or hand-printed in ink, in the Proposal form, as required in Attachment B. Respondent must indicate the corresponding Location number(s) and provide separate proposal forms if it is submitting a proposal for multiple Locations.

Improvement Plan

Respondent must also provide an estimate of improvement costs being proposed to prepare the site, if applicable, along with an approximate construction schedule. Improvements made by the Respondent that cannot be removed at the end of the term of the License Agreement will become the property of the City of Chicago.

Attachment B Compensation should be completed and submitted with the Proposal. Proposals that have an incomplete Attachment B may be deemed non-responsive.

3. Operations and Maintenance

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. Operators will be required to commit to a specific schedule of operating hours. Operators are required to be open no later than Memorial Day and remain open until October 31, unless other dates are approved by the Commissioner. There are dates when the Riverwalk is closed to the public for safety reasons and vendors are not permitted to operate which include New Year's Eve and the annual river dye event.

Operational Requirements

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

The City expects that concessions will be offered seven days a week throughout the Season. Hours of operations are specific to the concession being offered and will be listed individually in each specific License Agreement.

The City will provide landscaping maintenance, janitorial services, cleanup in the event of flooding, 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 and items contained within the site.

Trash collection and disposal will also be the responsibility of the Licensee. The City has high standards for its public spaces and wants to ensure good working order of the included amenities. 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."

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. Attachment A shows delivery locations. For Locations within Phase 1 east of Michigan Avenue, Lowest Level Wacker Drive is an area for temporary loading and unloading of materials and supplies. For Locations west of Michigan Avenue, there is space as shown in Attachment A for temporary parking and loading and unloading of materials and equipment between Michigan Avenue and Wabash Avenue.

Parking

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

Public Access

An eight-foot wide, ADA-accessible, continuous walkway must be always maintained for the entire length of the Riverwalk that the Riverwalk is open to the public except as authorized by the Commissioner.

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. Monthly reports will be required by the City and submitted with monthly MAG payments.

Construction Projects and Build Out

The available areas within the Riverwalk are “as is” condition. Capital Construction Projects and Build Out are not anticipated. Site improvements are expected and can be included in the Proposal.

Minimum Wage

In September 2014, Mayor Rahm Emanuel signed an executive order that requires all holders of City concessions agreements executed after October 1, 2014, to pay their employees performing work on City property (with certain exceptions) a minimum wage of \$13.00 per hour; this hourly wage increases annually every July 1st 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.

When an employer takes an allowance for gratuities pursuant to 820 ILCS 105/3(c), the employer shall base the calculation of amount to be paid by the employer to the employee on the minimum wage as set out in 820 ILCS 105/3 and add \$1.00 per hour to that amount. As of July 1, 2015, the amount to be paid with the gratuity allowance is \$5.95 per hour. Every July 1st this hourly wage increases 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.

All Licensees will be expected to comply with the Executive Order. For more information see: <http://chicityclerk.com/council/exec.php>

4. Utilities

Approximate locations of utilities are shown in Attachment A. The Respondent may propose to connect into or extend the utilities to any its Location within Riverwalk. Utilities for each Location are intended to be separately metered. The Licensee must comply with all applicable building code requirements and must obtain any required permits. Proposals should clearly indicate if their proposed operations require separate equipment specifically related to their particular operations. Connections will need to be made for all applicable utilities including but not limited to; electric, natural gas, water and telecommunications, and this is the responsibility of the Licensee.

Proposals that include connections to natural gas will be viewed favorably and are preferred over the use of propane. Propane has historically been permitted but is discouraged.

Respondent is responsible to pay for all utilities necessary for the operation of the Riverwalk. The City makes no promise on the availability of utilities at any location within the Riverwalk.

5. 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.

6. Insurance Requirements

The License Agreement 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 License Agreement. 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.

D. PROPOSAL REQUIREMENTS

Overview

Hard copies of the Proposals must be bound; all versions of the Proposals must include the following items organized and tabulated in the order stated below:

1. Cover Letter and Executive Summary
2. Site Specific Concessions Operations Plan
3. Qualifications and Experience Statement- including 3 Professional References
4. Compensation Schedule Including Projected Annual Sales, Net Income and Cash Flows
5. Opinion of Legal Counsel
6. Statement of No Exceptions to License Agreement
7. Executed Proposal Affidavit
8. Business Information Statement
9. EDS Certificate(s) of Filing
10. Financial Statements from the previous 3 years

1. Cover Letter- Executive Summary

- A. Outline the number of years Respondent has been in business and 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 RFP, 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. Respondent must identify any exceptions or objections it has to the City's sample License Agreement ("LA"), a copy of which will be provided in Attachment F to this RFP. The City may from time to time revise the LA; because of the short term of the Season, any changes are not anticipated. The City will not accept or entertain any exceptions or objections to the LA at any time after Proposal submittal except and only to the extent the City subsequently makes a material change to a substantive provision of the LA.

Respondents, including any individuals or entities that are partners or members in a joint venture, LLC or other business organization submitting a Proposal must complete the EDS on-line and include their certificate of filing with the Proposal, 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 Proposal.

2. Site-Specific Concession Operations Plan

For each Location that the Respondent proposes to operate, it must provide; a site design plan with total square footage indicating the footprint to be occupied, a list of operational requirements, including utilities, and also a location/area specific operations plan which includes documentation that describes Respondent's plans for providing food & beverage, recreational, cultural and/or educational concessions.

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

- A. Concession
 - Detailed description and explanation of the service of concession being proposed for the Location, including sample menu and description of proposed entertainment schedule and anticipated prices.
 - Explanation of how the Proposal provides a unique Chicago experience on the Chicago River.
 - Explanation of how the programming described in the proposal will draw people to the Riverwalk and assist the City in creating the Riverwalk as a desired downtown destination.
- B. Concession Look -Design and Construction
 - Site plan, including square footage, elevations, and concept renderings of the build-out of the restaurant and show concession layout.
 - Cost estimate for all site improvements being proposed, if applicable.
 - Design plan of site with proposed concession, including detailed description of look and feel especially in context with Riverwalk District and the Guiding Principles in Attachment B. Include a detailed description of any capital improvements.
 - Description of furniture and any amenities being brought to the site that will complement the daily operations of the concession being proposed.
- C. Implementation Plan
 - Improvements Respondent will make to prepare the location for operations, include estimated cost
 - Construction schedule for each of the improvements

- Anticipated date to begin operations
- Local hiring plan for staff
- Proposed schedule for set-up prior to beginning operations explanation of anticipated schedule of seasonal operations.

D. Operations Plan

- Explanation of year-round or seasonal operations
- Hours of Operation
- How the concession being proposed will activate the space, including entertainment.
- Anticipated schedule of deliveries
- List of daily, weekly and monthly needs from City.
- Explanation of how the concession complies with Guiding Principles in Attachment B.
- Explanation of how the concession enhances Riverwalk experience and is consistent with the aesthetic and historic nature of the site and Riverwalk District.

E. Green-Sustainability Plan

- Development and implementation of an environmentally friendly plan of daily operations, including but not limited to recycling program.
- Maintenance of the Location in an orderly, clean and safe fashion and a plan that makes use of environmentally friendly methods of operations, cleaning and activities in order to protect the Chicago River and its wildlife.
- Landscaping where possible that provides a strong feeling of nature and greenery in an urban context to supplement existing landscape of the Riverwalk.
- Explanation of other sustainable opportunities for, operations, programming etc.

4. Qualifications and Experience Statement

Respondents must clearly demonstrate relevant experience in the operation and management of concessions in similar facilities to the Chicago Riverwalk, waterfronts, parks, publicly accessible open spaces and other recreational, cultural, educational designations etc. ("Services"). If applicable, 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. Respondents must describe their qualifications and specialized experience necessary to provide the Services. This description should also include the proposed organizational structure, lists of key personnel and description of all personnel who will provide the Services. Specific experience and resumes of the individuals who will be directly involved in the daily operations of concessions on the Riverwalk are also requested.

Please provide at least three (3) references that are familiar with Respondent's current operations. The City prefers that Respondents provide individuals that are the Respondent's primary contact for day-to-day issues in their operations. The format for references is provided in Attachment X.

5. Compensation Schedule

Please complete the forms provided as Attachment B- Compensation Schedule.

6. Projected Sales, Projected Expenses, Net Income and Cash Flow Statements

The historical information of revenues generated since 2018 when the existing contracts were executed is provided above. Information on the sales and revenues from the 2022 Season is not presently available, however revenues to date are similar to the 2021 season.

Respondents are to provide a good faith estimate of the expected annual gross sales, cost of sales, operating expenses, net income and cash flow for the relevant Season.

Respondents are encouraged to include any data available or projections on how their proposal can provide an indirect financial benefit to the City.

7. Opinion of Counsel

The opinion of Respondent's legal counsel must state whether any litigation is pending or contemplated that could affect the Respondent's ability to implement its Proposal.

9. Conflicts

If applicable, Respondent must provide a statement and information regarding conflicts of interest as described in the Evaluation Criteria. This information will not be counted against the page limit of the proposal.

10. Exceptions

If you take exception to any requirements of this RFP, including its attachments, please provide them at the tab indicated. Please provide the requirement, nature of the exception and explanation. Exceptions will be considered in the evaluation of the Proposals. Acceptance of a Proposal does not connote agreement to any exceptions stated by a Respondent but does indicate the City's desire to reach mutually agreeable terms through negotiation. **The City will not accept any exceptions to any requirements set out in this RFP during contract negotiations that were not raised in the Proposal.**

11. Proposal Affidavit

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

12. 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 a Proposal must complete the EDS on-line and include their certificate of filing with the Proposal, if filed online, 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_disclosurestatementse ds.html

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

Proposers 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.

13. 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, prepared in accordance with generally accepted accounting principles, for the most recent three (3) complete financial statements.

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 RFP, 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 Proposal.

14. Insurance

Selected Respondent will be required to submit evidence of insurance in the amounts specified in the attached Attachment C. Additional insurance may be required based upon the nature of the proposal.

E. EVALUATION CRITERIA

All Proposals will be reviewed and evaluated by an Evaluation Committee appointed by the Commissioner. The Evaluation Committee will make a recommendation to the Commissioner regarding award of the Agreement to a qualified Respondent that offers the most favorable Proposal to the City for any Location or Locations. However, this RFP does not obligate the City to fill all Locations and the City may issue a new RFP for some or all Locations if it determines that doing so is in the best interest of the City. Upon concurrence by the Commissioner and the Budget Director, the City will enter into contract negotiations with that Respondent. In the event that the City and the selected Respondent are unable to conclude negotiations on the terms and conditions of the License Agreement, the City may initiate negotiations with another Respondent offering the next most favorable Proposal for such Location (s) as determined by the City.

The City reserves the right to seek additional information from any or all Respondents responding to the RFP including, without limitation, meeting with one or more Respondents. The City also reserves the right to identify finalists and conduct interviews of those finalists prior to recommendation by the Evaluation Committee. The specific evaluation criteria are listed below.

Site Specific Concession Operations Plan

10 points

The Committee will consider the Respondent's proposed plan of operations and amenities proposed for the Location, including:

- The ability of the types of services offered to enhance residents' and visitors' enjoyment of the Riverwalk by creating a vibrant area.
- Food and beverage, recreational, cultural and education services or retail being proposed that provide an experience that are unique and along with the Guiding Principles of the Riverwalk.
- Schedule of entertainment included as an additional amenity to regular operations.
- Hours of operation being proposed to activate the space.
- The fees it proposes to charge the public, if any.
- Promotion of tourism resulting from operations.

- The aesthetics of the proposed amenities to develop the Location.
- The quality and creativity of the Respondent's plan for the development of the Location.
- The quality, creativity and thoughtfulness of the proposed site improvements, including capital improvement which will further activate the space and draw visitors and make the Riverwalk more enjoyable.
- Ideas to beautify the Location with landscaping, seating areas, lighting, and other decorative elements.
- The durability of the proposed materials and layout and the ability to withstand an outdoor park in an urban environment.

Implementation Plan

10 points

The Committee will consider the Respondent's proposed plan to build the facility and amenities proposed for the Location, including:

- Description of the steps required to execute the proposed design
- The schedule of work for site improvements being proposed in order to open by May 2023
- Strategy behind the hiring plan to ensure that staff is reflective of the City's population

Respondent Experience and Qualifications

10 points

The Committee will consider the Respondent's experience and qualifications based on an assessment of:

- Number of years of operation of such service.
- Number of customers and experience in previous years.
- Experience level and number of Respondent's employees.
- Local hiring plan for seasonal staff.
- Actual Riverwalk experience or experience at similar locations.

Green Sustainable Plan

10 points

The committee will evaluate the proposal to maintain the Location using environmentally friendly methods and to protect the Chicago River and its wildlife, including but not limited to

- Use of energy efficient amenities.
- Development and implementation of an environmentally friendly plan of daily operations, including recycling program for the Location.
- Maintenance of the Location in an orderly, clean and safe fashion and a plan that makes use of environmentally friendly methods of operations, cleaning and activities in order to protect the Chicago River and its wildlife.
- Collection and disposal of all trash and recycling, including providing receptacles for recycling and picking up all loose or blowing trash.
- Landscaping where possible/applicable that provides a strong feeling of nature and greenery in an urban context.

Compensation to the City

10 points

Evaluation of this criterion is based on the MAG and the Supplemental Revenue Fee proposed and the explanation of how the estimate of annual gross revenues generated from the location was determined. Site improvements being proposed for the Location and how these improvements benefit the City of Chicago will all be considered as compensation. The Evaluation Committee will consider the compensation proposed as part of the MAG and Supplemental Fees, as well as the site improvements, including the cost of the improvements and their added value.

Projected Annual Sales, Net Income and Cash Flows

10 points

Evaluation of this criterion is based on the Respondent's projected annual sales and estimated net

income and cash flows for the term of the license. If the Respondent is a certified not-for-profit or educational institution, please respond with a proposal on compensation that fits your appropriate business model and explain how your proposal will draw people to the Riverwalk.

Financial Capacity & Legal

Respondent Organization & Financial Statements

10 points

The Evaluation Committee will assess the company organization and financial condition of the Respondent and if applicable, equity owners, and entity in the chain of ownership. The evaluation Committee will consider the completeness and accuracy of each Respondent's Proposal.

Legal Actions

Pass or Fail

The Evaluation Committee will consider any and all material legal actions, losses, costs, damages, liabilities, claims, suits, actions, causes of action and expenses suffered or incurred and arising from or in connection with Respondent's operations, and if applicable, equity owners and any entity in the chain of ownership. Respondents must not be in default or arrearage under any previous or existing contract(s) with the City, the State of Illinois or any political subdivision of the State of Illinois. The City reserves the right to disqualify any Respondent or any constituent entity of a Respondent that has pending litigation or claims with the City. If a Proposal includes a subcontractor, sublessee or supplier that has pending litigation claims with the City, the City, in its sole authority and discretion, may determine that such litigation or claims may adversely affect the ability of the parties to work together effectively under the contract contemplated by the RFP and reject the Proposal on that basis.

Conflict of Interest

Pass or Fail

The Evaluation Committee will consider any information regarding a Respondent, including information contained in a Respondent's proposal, that may indicate any conflicts (or potential conflicts) of interest which might compromise the Respondent's ability to successfully perform the proposed services or undermine the integrity of the competitive procurement process. If any Respondent has done any work for the City in researching, consulting, advising, drafting, or reviewing this RFP or any work related to this RFP, such Respondent may be disqualified from further consideration

ATTACHMENT A:

Chicago Riverwalk Concession Program Handbook

www.chicago.gov/city/en/sites/chicagoriverwalk/home/concession-program.html

ATTACHMENT B:

Compensation

COMPENSATION CHART

Three Year Term	License Fee- MAG	% Additional Fee	Estimated Gross Revenues	Estimated Additional Fee	Estimated Operating Costs	Total Fee
Year One:						
Year Two:						
Year Three:						
Extension Year 1:						
Extension Year 2:						

ATTACHMENT C:

Insurance Requirements

Concessions on the Chicago Riverwalk 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 \$500,000 each accident; \$500,000 disease-policy limit and \$500,000 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) Liquor Liability

When applicable, Liquor Liability ("Dram Shop") Insurance must be obtained with limits of not less than \$1,000,000 per occurrence. Coverage must include but not be limited to the following: off-site coverage, assault and battery coverage, and common law. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the services.

6) 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 Fleet and Facility Management, Attn: Bureau of Asset Management, 30 North LaSalle Street, Suite 300, 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.

**Concessions on the Chicago Riverwalk
Charter –Tour Boat Operations License Agreement
Water Taxi Boat Operations Agreement**

A. INSURANCE REQUIRED

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee 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 \$500,000 each accident; \$500,000 disease-policy limit and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater. Coverage shall include but not be limited to: other states endorsement, alternate employer and voluntary compensation endorsement, United States Long Shore and Harbor Workers and Jones Act when applicable.

Licensee 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 Licensee'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 Licensee's acts or omissions, whether such liability is attributable to the Licensee 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. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee 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 Licensee 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 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.

Licensee 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 \$2,000,000 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.

Licensee 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) Marine Protection & Indemnity

When Licensee undertakes any marine operation in connection with this Contract, Licensee must provide or cause to be provided, Marine Protection & Indemnity coverage with limits of not less than \$1,000,000. Coverage must include property damage and bodily injury to third parties, injuries to crew members if not provided through other insurance; damage to wharves, piers and other structures, and collision. The City of Chicago is to be named as an additional insured.

6) Liquor Liability

When applicable, Liquor Liability ("Dram Shop") Insurance must be obtained with limits of not less than \$1,000,000 per occurrence. Coverage must include but not be limited to the following: off-site coverage, assault and battery coverage, and common law. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the services.

7) Property

Licensee 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 Licensee and for loss or damage to property in the Licensee's care, custody and control.

B. Additional Requirements

Evidence of Insurance. Licensee must furnish the City of Chicago, Department of Fleet and Facility Management, Attn: Bureau of Asset Management, 30 North LaSalle Street, Suite 300, 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. Licensee 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. Licensee 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 Licensee 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 Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee 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.

Licensee 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 Licensee.

Waiver of Subrogation. Licensee 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. Licensee 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 Licensee's insurer(s).

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

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee'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 Licensee 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 Licensee 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 Licensee. 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 Licensee 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 Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee shall name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee 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 Licensee. Licensee shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee 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. Licensee 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, Licensee 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 Licensee'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.

**Concessions on the Chicago Riverwalk
Construction Insurance Requirements for Work on the Chicago Riverwalk**

A. INSURANCE REQUIRED

Contractor must provide and maintain at Contractor's own expense until Contract completion and during the time period following completion if Contractor 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 Contract.

- 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 Contract and Employers Liability coverage with limits of not less than \$500,000 each accident; \$500,000 disease-policy limit; and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Contractor 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 and the Vendor/Licensee must be provided additional insured status with respect to liability arising out of Contractor's work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 or on an endorsement form at least as broad for ongoing operations and completed operations. The City's additional insured status must apply to liability and defense of suits arising out of Contractor's acts or omissions, whether such liability is attributable to the Contractor or 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. Contractor's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Contractor 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 Contractor or cause to 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 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 and the Vendor/Licensee are to be added as additional insureds on a primary, non-contributory basis.

Contractor 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.

Contractor 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) Contractors Pollution Liability – (If Applicable)

When any work performed involves a potential pollution risk that may arise from the operations of Contractor's scope of services Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$2,000,000 per occurrence. Coverage must include but not be limited to completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City and the Vendor/Licensee are to be named as additional insureds.

6) Builders Risk/Installation – If Applicable)

When any construction, or major installation projects is undertaken on the property including improvements, betterments, and/or repairs, the Contractor must provide or cause to be provided, All Risk Builders Risk/Installation Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility or project. The City of Chicago and the Vendor/Licensee are to be named as additional insureds and loss payees.

The Contractor is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Contractor.

B. Additional Requirements

Evidence of Insurance. Contractor must furnish the Vendor/Licensee and the City of Chicago, Department of Fleet and Facility Management Room 806, 121 North LaSalle Street, 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 Contract, 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 Contract. Contractor must submit evidence of insurance prior to execution of Contract. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Contract have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of Contract. 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 Contractor, 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. Contractor must advise all insurers of the Contract provisions regarding insurance. The City in no way warrants that the insurance required herein is sufficient to protect Contractor for liabilities which may arise from or relate to the Contract

Failure to Maintain Insurance. Failure of the Contractor to comply with required coverage and terms and conditions outlined herein will not limit Contractor's liability or responsibility nor does it relieve Contractor of the obligation to provide insurance as specified in this Contract. Nonfulfillment of the insurance conditions may constitute a violation of the Contract, and the City retains the right to suspend this Contract until proper evidence of insurance is provided, or the Contract may be terminated.

Notice of Material Change, Cancellation or Non-Renewal. Contractor 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 Contractor.

Waiver of Subrogation. Contractor 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 Contract. Contractor 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 Contractor's insurer(s).

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

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

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

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

Insurance and Limits Maintained. If Contractor 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Vendor/Licensee and the City.

Joint Venture or Limited Liability Company. If Contractor 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 Contractor. If Contractor desires additional coverages, the Contractor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Contractor shall name the Subcontractor(s) as a named insured(s) under Contractor's insurance or Contractor 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 Contractor. Contractor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Contractor is responsible for ensuring that each Subcontractor has named the City as an additional insured where required and name the City as an additional insured on an endorsement form acceptable to the City. Contractor 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, Contractor 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 Contractor's liability or responsibility.

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

ATTACHMENT D- AFFIDAVIT

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 (“Riverwalk”) based upon all terms and conditions set forth in the City’s Request for Proposal October 12, 2022 (“RFP”), 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 RFP 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 RFP are due to be submitted to the City, as set forth in the RFP documents.

6. The City reserves the right to reject any and all proposals, to withdraw the RFP, to reissue the RFP, 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 RFP 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 RFP and will not be responsible for any fees, expenses or commissions purported to arise from the execution of any license related to this RFP. 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 RFP; 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 RFP 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 RFP.

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

ATTACHMENT E:

Business Information Statement

Instruction: Provide the following information for the entity or individual completing this Statement (the "Reporting Entity"). If more than one entity must complete this Statement, include an organization chart indicating the relationship between the entities.

A. Basic Information:

1. Name of Reporting Entity completing this form:
2. Relationship of Reporting Entity to Respondent:

B. Reporting Entity Information

1. Principal Office Address:
2. Telephone and Facsimile Numbers:
3. E-Mail Address:
4. Contact Person's Name/Title:
5. Is Reporting Entity an MBE, WBE, DBE, ACDBE, BEPD and/or owned by a Chicago Resident? (If applicable, attach copy of certification letter and/or identify Chicago resident owner.):
6. Form of Reporting Entity:

C. If Reporting Entity is a corporation, please answer the following:

1. When incorporated?
2. Is the corporation incorporated in the State of Illinois?
3. Is the corporation registered to do business in Illinois?
4. Name, address and phone number of registered Illinois agent:
5. Attach Certificate of Authority to transact business in Illinois.
6. The corporation is:
7. Provide the name, title, and address of each director, officer, and principal shareholder owning 7.5% or more of the corporation's issued stock (use additional pages as necessary).

Director's Name:

Address:

Principal Business Affiliation (Other than Respondent's Directorship):

Percent Owned:

For Each Officer

Officer Name	Position	Address	Percent of Ownership

For Each Principal Shareholder

Shareholder Name	Address	Percent of Ownership

Additional Instruction: if any principal shareholder is not an individual, that business entity must also submit a Business Information Statement.

ATTACHMENT F:

Chicago Riverwalk Concession License Agreement

CHICAGO RIVERWALK CONCESSION LICENSE AGREEMENT

BETWEEN

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

AND

[NAME OF LICENSEE]



**LORI E. LIGHTFOOT
MAYOR**

**SANDRA BLAKEMORE
ACTING COMMISSIONER**

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CHICAGO RIVERWALK CONCESSION LICENSE AGREEMENT

This Chicago Riverwalk Concession License Agreement (“**Agreement**”) is entered into as of _____, 2022 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 Municipal Code Chapter 10-40.

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

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

ARTICLE 1 CITY APPROVAL

If the initial term of this Agreement exceeds 36 months or the term including extensions exceeds 60 months, then the Agreement is subject to approval by the City Council of the City of Chicago. In such a case, the City is not bound by the terms of this Agreement until such time as it has been approved by the City Council and has been duly executed by the Commissioner of AIS or any representative authorized in writing to act on the Commissioner’s behalf. As provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless

expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner or the Commissioner's authorized representative. As provided in Section 11.3, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Commissioner or his proxy, subject to the approval of the Budget Director and the approval of the Corporation Counsel as to form and legality. As further provided in Section 11.3, any substantial amendment of the terms of this Agreement will require approval by the City Council, if Council approval was required for authority to enter into this Agreement at its inception.

ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS

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

2.2 Incorporation of Exhibits. The following exhibits are incorporated into and made a part of this Agreement:

Exhibit 1	Licensed Space(s) and Confirmation(s) of DBO
Exhibit 2	Term Sheet
Exhibit 3	Site Development Plan
Exhibit 4	Products and Price List
Exhibit 5	Form of Letter of Credit
Exhibit 6	Insurance Requirements
Exhibit 7	MBE\WBE Special Conditions and Related Forms
Exhibit 8	Economic Disclosure Statement
Exhibit 9	Website for Chicago Riverwalk Community Marketplace Concession Program Handbook

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 Concession Program Handbook" or "Riverwalk 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 Concession Program Handbook is available on the Chicago Riverwalk website set forth in Exhibit 9 attached hereto. Any amendment of the Chicago Riverwalk 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.

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

"Commissioner" means the head of the Department and any City officer or employee authorized to act on her/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 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 4 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.

"Construction Documents" means the drawings and specifications for the construction of Improvements, approved by the Commissioner pursuant to Section 5.4.

"Date of Beneficial Occupancy" or "DBO" means, as to the Concession Space, the latest to occur of (A), (B) or (C) as follows:

- A. the date that is 90 days after the Delivery Date of the Concession Space;
- B. the date that is 90 days after the building permit for the Improvements for the Concession Space is issued; provided that the Licensee has demonstrated to the satisfaction of the Commissioner that Licensee timely submitted design drawings in accordance with Section 5.4 hereof and promptly applied for, and diligently pursued the issuance of, such building permit; or
- C. the date set forth in the Development Plan for the commencement of retail sales in the Concession Space; provided, however, that the date set forth in the Development Plan for commencement of retail sales shall be extended one day for each day Licensee has demonstrated to the satisfaction of the Commissioner that Licensee was delayed due to *force majeure* pursuant to Section 11.19.

Notwithstanding the foregoing, if Licensee completes the Improvements in the Concession Space and commences retail sales in the Concession Space before the DBO determined in accordance with the foregoing, the DBO for the Concession Space is the date that retail sales commence.

The DBO for the Concession Space shall be confirmed in writing by the parties, and such written **"Confirmation(s) of DBO"** shall thereafter be attached to Exhibit 1 of this Agreement without need for a formal amendment of this Agreement. The Date of Beneficial Occupancy for any Storage Space is the Delivery Date for that Storage Space.

"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.

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

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

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

“Event of Default” has the meaning set forth in Article 9.

“Fees” means all amounts payable by Licensee in connection with this Agreement, including but not limited to License Fee, Percentage Fees, any liquidated damages specified in the Agreement for non-compliance with the City’s requirements for Concession operations.

“Gross Revenues” means the total amount in dollars, attributable to a License Year, of the actual sales price of all receipts, whether for cash or on credit, that are derived from business conducted in, on or from the Licensed Space, all orders received or filled at or from the Licensed Space, all deposits not refunded to purchasers, all orders taken in and from the Licensed Space whether or not the orders are filled elsewhere, and receipts or sales by Licensee and any other person or persons doing business in or from the Licensed Space, including receipts from promotions, advertising, and income derived or any other use of the Licensed Space by Licensee. Gross Revenues do not, however, include the following:

- A. any sums collected and paid out by Licensee for any sales, retail excise, use, privilege, or retailers occupation taxes now or later imposed by any duly constituted governmental authority;

- B. the amount of any cash or credit refund made upon any sale, but only if the original sale was made in or from the Licensed Space and included in Gross Revenue;
- C. bona fide transfers of Products to or from the Licensed Space to any other stores or warehouses of Licensee;
- D. sales of Licensee's fixtures and store equipment not in the ordinary course of Licensee's business;
- E. bulk sales of Products inventory not sold to the public and not in the ordinary course of business; and
- F. insurance proceeds received from the settlement of claims for loss of or damages to Improvements, Products, fixtures, trade fixtures and other Licensee personal property other than the proceeds of business interruption insurance.

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

"Imposition" means permit fees, license fees, and any other fee or charge not specified in this Agreement but otherwise payable by Licensee pursuant to a statute, ordinance, or regulation in order for Licensee to operate the Concession 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. The minimum Improvement Costs must not be less than 95% of the budgeted Improvement Costs included in the approved Development Plan. Licensee's actual, reasonable Improvement Costs will be memorialized in the written Confirmation of DBO that will be attached to Exhibit 1 upon approval by the Commissioner.

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

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

"License Year" means:

- A. for the initial License Year of this Agreement, a period beginning on the Date of Beneficial Occupancy of the Concession Space and ending on December 31 of that calendar year, and

- B. for the balance of the Term, each successive calendar year, but including only that portion of the calendar year prior to the date on which the Term expires or the Agreement is otherwise terminated.

"License" means the privilege granted to Licensee under this Agreement to operate the Concession at the Chicago Riverwalk in the Licensed Space.

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

"Products" means the 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 4. Licensee is not permitted to sell any items or types of items not identified in Exhibit 4 or conduct any other business from the Licensed Space unless otherwise agreed in writing by the Commissioner.

"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 RFP, 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.

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

ARTICLE 4 LICENSE AND LICENSEE'S OPERATIONS

4.1 License.

A. Effective as of the Effective Date, the City, in consideration of the payment of the Fees, hereby grants the non-exclusive privilege to the Licensee to operate a Concession on the Chicago Riverwalk from the Licensed Space subject to the terms contained in this Agreement. The Licensee is not a tenant. This Agreement creates a temporary license only. The Licensee acknowledges and agrees that the Licensee shall not hold or claim at any time an interest or estate

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

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

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

- (i) interferes or might interfere with the reasonable use by others of Common Areas or Licensed Space of other licensees;
- (ii) hinders or might hinder 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, unless the operations are not otherwise prohibited under this Agreement and Licensee pays the increase in insurance premiums occasioned by the operations;
- (v) would involve any illegal purposes; or
- (vi) is not consistent with the Guiding Principles set forth in the Chicago Riverwalk Concession Program Handbook.

4.2 No Sublicenses, Assignments or Other Uses. Licensee understands and agrees that the Licensed Spaces were determined by the City so that the Concession operated by Licensee is an element of an overall concession program. Accordingly, Licensee acknowledges that the principal purpose of this Agreement is 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.

4.3 General Requirements for Operation of Concessions. Licensee has the authority to manage and administer the Concession in the Licensed Space, subject to the rights of the City under the law, in equity, and under this Agreement to direct Licensee in order to ensure that the Chicago Riverwalk operates in the most effective and efficient way possible and to supervise the Licensee’s performance. Licensee covenants to take all commercially reasonable measures to maintain, develop, facilitate and increase the business of the Concession so as to maximize Gross Revenues. Licensee further covenants that neither it nor any Affiliate of Licensee will divert or cause or allow to be diverted any business from the Licensed Space to other locations not at the 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 Riverwalk Concession Program 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 Riverwalk Concession Program 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 good will 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 Licensed Space. Licensee must not use any space outside the Licensed Space for sale, storage or any other undertaking, other than in connection with deliveries made in a prompt, timely and efficient manner.

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 Licensed Space in accordance with this Agreement, in furtherance of which Licensee must, among other things:

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

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

4.4 Hours of Operation.

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

B. Except as otherwise permitted under this Agreement, if Licensee fails to operate its Concession from the Licensed Space during all times that Licensee is required to do so under this Agreement and the failure continues for more than three days after the City gives Licensee notice,

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

4.5 Personnel.

A. Staff.

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

4.6 Operation and Maintenance.

A. 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 Licensed Space, 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 Licensed Space. Licensee must clean, maintain and repair (including replacements, where necessary) the Licensed Space and Improvements in first-class condition and repair during the entire Term.
- (ii) Licensee is responsible for pest control within the Licensed Space by contracting with a professional pest control service to provide service on a regular basis or as needed, or at the Commissioner's election, the City 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.

- (iii) If applicable, Licensee must, at its own expense, keep the kitchen waste and exhaust system, including the grease trap and all risers, piping and fans used in connection with the waste and exhaust systems, whether located in or outside of the Licensed Space, and all other pipes or ducts used by Licensee, including black iron duct, in good repair and so as to meet the highest standards of cleanliness, health, and safety, in a manner consistent with the operation of a first-class restaurant and in accordance with all applicable laws, codes and regulations of any governmental authority having jurisdiction. Licensee must clean grease pans on a regular basis. Licensee must properly maintain the grease trap to prevent any overflow or discharge of grease. The grease trap and all plumbing pipes must be rodded and cleaned regularly and as often as necessary to prevent clogging or discharge. Licensee must not permit any grease to be discharged into the City's plumbing lines. If fixtures or equipment are installed in or attached to roof vents or other openings in the structure or to ducts that connect with the openings, Licensee must keep the ducts, vents and openings free from the accumulation of grease, dirt and other exhaust matter and must furnish and service any filters or other equipment necessary to prevent such accumulation. Licensee must keep the exhaust fan in good condition and repair so as to provide at least the air flow velocities required by applicable codes and regulations. Without limiting the foregoing, Licensee must clean black iron 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.
- (iv) 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 Licensed Space as set forth in Section 4.8 below, Licensee must install and maintain in good working order and in accordance with the rules and regulations of all insurers and applicable laws, codes, and regulations of any governmental authority, all fire extinguishing systems in the Licensed Space.
- (v) Upon request, Licensee must provide City or CMR with monthly repair and maintenance reports detailing all repair and maintenance undertaken with respect to its Licensed Space. In the event that such repair and maintenance reports indicate that Licensee is not complying with its repair and maintenance obligations, it shall be an Event of Default. In addition to any other remedies available to the City, if Licensee fails to undertake required repair or maintenance within 5 days after receiving notice from the Commissioner (or such shorter time as may be required due to health or safety reasons) the City may undertake the required repair or maintenance through a City contractor or its own forces and charge Licensee the

reasonable cost thereof.

- (vi) To the extent any City ordinance imposes a stricter standard than the requirements of this section, the stricter standard must govern.
- (vii) Any damage to property of the 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 this 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 Licensed Space, unless approved by the Commissioner in writing.

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

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

4.7 Utilities.

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

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

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

main entry point of the utility to the 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 Licensed Space.

4.8 Refuse Handling.

A. Licensee, at its own cost and expense, must provide for the handling of all refuse, including trash, garbage, recycling and other waste created by its Concession operations and for their disposal at the Back of the House Areas within the Chicago Riverwalk designated by the Commissioner from time to time. Within its Licensed Space, Licensee must provide a complete and proper arrangement for the adequate sanitary handling and disposal of trash, garbage, recycling and other refuse resulting from its Concession operations. Licensee must provide and use suitable covered metal receptacles for all trash, garbage, recycling and other refuse in accessible locations within the boundaries of each Licensed Space. Piling of boxes, cartons, barrels or other similar items in an unsightly or unsafe manner on or about the Licensed Space or the Common Areas is forbidden. The Commissioner reserves the right, from time to time, to establish time periods or schedules during which Licensee must remove refuse from the Licensed Space. 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 Riverwalk Concessions Program 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.

4.9 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 Licensed Space and except as are related to Licensee's Concession.

4.10 Distribution and Storage; Deliveries.

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

4.11 Certain Rights Reserved By the City.

A. Except as expressly provided otherwise in this Agreement: the City has the rights set forth below, each of which the City may exercise with notice to Licensee and without liability to Licensee for damage or injury to property, person or business on account of exercising them; the City's exercise of any such rights is not deemed to constitute a breach of this Agreement or a disturbance of Licensee's use the Licensed Space; the City's exercise does not give rise to any claim, including for set-off or abatement of Fees; the City's exercise also does not relieve Licensee of any obligation to pay all Fees when due. The rights include the rights to:

- (i) Install, affix and maintain any and all signs throughout the 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 Licensed Space, 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 Licensed Space is reasonably accessible and usable;
- (iii) Licensee is responsible for providing locks for all doors within and into the Licensed Spaces. Keys to the Licensed Spaces, including master keys and passkeys, to all doors within and into the Licensed Spaces will at all times be kept under adequate and appropriate security by Licensee. Licensee must provide the Concession Management Representative two copies of all keys to the Licensed Spaces, include any master keys and passkeys. Notwithstanding the provisions for the Department's access to the Licensed Spaces, Licensee releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault. Upon the expiration or termination of the Term of this Agreement, Licensee must return all keys to the Concession Management Representative and must disclose the

combination of any safes, cabinets or vaults left in the Licensed Space;

- (iv) Approve the weight, size and location of safes, vaults and other heavy equipment and articles in and about the Licensed Space and to require all such items and furniture and similar items to be moved into or out of the Chicago Riverwalk and the Licensed Space only at the times and in the manner as the Commissioner directs in writing. Licensee must not install or operate machinery or any mechanical devices of a nature not directly related to Licensee's ordinary use of the Licensed Space without the prior written consent of the Commissioner. Movements of Licensee property into or out of the Chicago Riverwalk or the Licensed Space 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 Licensed Space;
- (v) Establish controls for the purpose of regulating all property and packages, both personal and otherwise, to be moved into or out of the Chicago Riverwalk and the Licensed Space;
- (vi) Show the Licensed Space to prospective Licensees at reasonable times and, if vacated or abandoned, prepare the Licensed Space for re-licensing;
- (vii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Licensed Spaces at reasonable locations;
- (viii) Enter the Licensed Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the Riverwalk Concession Program 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;
- (ix) Grant to any person the right to conduct any business or render any service in or to the Chicago Riverwalk; and
- (x) Promulgate from time to time rules and regulations regarding the operations at the Chicago Riverwalk.

B. Licensee will be solely responsible for installation and maintenance of all sprinkler systems, if any, 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 LICENSED SPACE AND IMPROVEMENTS

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

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

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

C. Additional Space.

(i) During the Term, the Commissioner may from time to time, at his sole discretion, make Additional Space available for Licensee's Concession operations. In such event, the Commissioner will send written notice to Licensee to advise Licensee of the following:

- a. size and location of the Additional Space being offered, if any;
- b. whether the Additional Space is being offered as Concession Space or Storage Space;
- c. Licensee's Improvement obligations for the Additional Space; and
- d. the additional 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 Exhibits 1 and 2 modified accordingly. Upon notification from Licensee to the Commissioner that it rejects the Additional Space or if Licensee fails to notify the

Commissioner within 30 days that it accepts the Additional Space, the offer will terminate and the Commissioner may offer the Additional Space to others.

- (ii) Nothing in (i) above requires the Commissioner to offer any Additional Space to Licensee or limits or restricts the Commissioner's or the City's right to enter into any concession agreement with any third party for such space. Additional Space, if any, offered to Licensee is solely for the benefit of the City or **Riverwalk** 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 Licensed Space. Licensee shall retain title and ownership to all Products and other Licensee personal property and proprietary trade fixtures in the Licensed Space, 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 Licensed Space, and, upon completion, Licensee Improvements.

5.3 Licensee's Improvement Obligations.

A. Concession Space and Storage Space. Unless otherwise agreed in writing by the Commissioner, Licensee must complete, or cause to be completed, the Improvements as described in the Development Plan. Improvements shall be at Licensee's sole cost and expense and must be completed on or before the Date of Beneficial Occupancy set forth for the Licensed Space in accordance with the schedule set forth in the Development Plan, subject to Section 11.19, "Force Majeure." Failure to achieve DBO for the Improvements in accordance with the schedule in the Development Plan will result in liquidated damages pursuant to Section 5.4(J).

B. Additional Space. Licensee must complete or cause to be completed, at Licensee's sole cost and expense, the Improvements for each Additional Space approved by the Commissioner by the proposed Date of Beneficial Occupancy applicable to each such Additional Space, at a total investment in Improvement Costs for each permanent Additional Space of at least 95% of the budget approved by the Commissioner.

C. Improvement Costs. Only Improvement Costs of the types set forth in the budget in the Development Plan are deemed to be validly incurred Improvement Costs for purposes of this Agreement. Licensee must provide the Commissioner with a statement certified by Licensee, setting forth the aggregate amount of the Improvement Costs expended by Licensee for each Licensed Space, with such detail as may be reasonably requested by the Commissioner. The certified statement must be submitted at the same time as the "as-built" drawings for the Licensed Space. Licensee must make available to the Commissioner, at the Commissioner's request, receipted invoices for labor and materials covering all Improvement Costs. The Commissioner has the right to audit the Improvement Costs. If there is a discrepancy of 5% or more, the cost of the audit must be paid promptly by Licensee upon request. If the Licensee's actual Improvement Costs for the Licensed Space are less than 95% of the amount set forth in the Development Plan for the Licensed Space, Licensee must, within 30 days after the date of completion of the Work or the Date of Beneficial Occupancy, whichever is earlier, pay the City the difference between 95% of the amount set forth in the Development Plan and the actual Improvement Cost for the Licensed Space. The actual Improvement Costs, as approved by the Commissioner, will be memorialized in the confirmation of DBO for the Licensed Space in question and attached to Exhibit 1.

5.4 Work Requirements.

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

B. Compliance with Standards. Licensee must comply in its design, construction, use, occupancy and operation of the Licensed Space, at its own cost, with:

- (i) all federal, State of Illinois, and City laws, rules, regulations and ordinances, including all building, zoning and health codes and all Environmental Laws; and
- (ii) the Riverwalk Concession Program Handbook.

Licensee must complete or cause to be completed all Improvements in accordance with all rules, regulations and standards, including the Riverwalk Concession Program Handbook Guidelines and the approved Construction Documents (as defined below) for any Improvements. If there is a conflict between work requirements stated in this Agreement and those set forth in the Riverwalk Concession Program Handbook, the Commissioner has the sole discretion to determine which prevails. No construction must take place until the Commissioner has approved the Construction Documents. Licensee must provide for any supplemental heating, cooling and exhaust facilities that Licensee may require to properly heat, cool, ventilate and exhaust air in the Licensed Space. All such supplemental facilities must be designed and installed in accordance with the Riverwalk Concession Program Handbook and applicable building codes, and must be approved by the Commissioner prior to installation. If at any time the Licensee's supplemental heating, cooling and exhaust facilities fail to comply with the design and operational standards set forth in the Riverwalk Concession Program Handbook, Licensee must, on notice from the City, cause repairs to be made so that Licensee is in compliance with this requirement.

C. Development Plan. Licensee's Development Plan, as approved by the Commissioner, is attached hereto as Exhibit 3. It describes and depicts the Licensee's thematic concept for the Concession Space (including storefront design images, as appropriate), floor plan(s) of the Concession Space, its plan and schedule for implementing the Improvements and commencing Concession operations in the Licensed Space, temporary facilities that may be necessary to meet the requirements of this Agreement, and its other submission requirements as set forth in the Riverwalk Concession Program Handbook. The Development Plan must include the anticipated Date of Beneficial Occupancy of each Concession Space, the budgeted Improvement Costs for each Concession Space, and the Delivery Date necessary in order to achieve the anticipated DBO for each Concession Space.

D. 60 Percent Design Phase. Within 45 days of the Effective Date, Licensee must submit to the Commissioner its proposed 60 percent design drawings and specifications prepared as required under the Riverwalk Concession Program Handbook ("**60 Percent Designs**"). The Commissioner will attempt to review and respond to the 60 Percent Designs within 10 days after the Commissioner's receipt with an "accepted," "accepted [with comments] as noted," or "revise and resubmit." If any of the 60 Percent Designs requires resubmission, Licensee must resubmit the 60 Percent Designs addressing the Commissioner's comments within 5 days after receiving the Commissioner's response. Licensee must resubmit the 60 Percent Designs as many times as

necessary until the Commissioner either accepts them or accepts them as noted; however, if Licensee fails to provide acceptable 60 Percent Designs after 5 attempts, it will be an Event of Default.

E. 100 Percent Design Phase. Licensee must prepare and submit to the Commissioner, within 30 days following its receipt of the Commissioner's approval of the 60 Percent Designs, the 100 percent design drawings and specifications and a construction schedule that complies with the Development Plan ("**100 Percent Designs**"). The Commissioner will attempt to review and respond to the 100 Percent Designs within 10 days after the Commissioner's receipt with an "accepted," "accepted [with comments] as noted," or "revise and resubmit." If any of the 100 Percent Designs requires resubmission, Licensee must resubmit the 100 Percent Designs addressing the Commissioner's comments within 5 days after receiving the Commissioner's response. Licensee must resubmit the 100 Percent Designs as many times as necessary until the Commissioner either accepts them or accepts them as noted; however, if Licensee fails to provide acceptable 100 Percent Designs after 3 attempts, it will be an Event of Default. Upon acceptance by the Commissioner, the 100 Percent Designs drawings, specifications, and construction schedule will be deemed the approved "**Construction Documents**". If Licensee desires to use the services of any Subcontractor, Licensee must submit the name and qualifications of the Subcontractor to the Commissioner for review and approval, which approval may be granted or denied in the Commissioner's sole discretion. Within 10 days following the receipt of Commissioner's approval of the 100 Percent Designs, Licensee must prepare and submit to the City's Buildings Department, or its successor agency, applications for all building permits required to undertake construction of the Improvements.

F. Start of Construction. Within 10 days after the latest of occur of: 1) the date the City provides access to Licensee to the Licensed Space, 2) the date Licensee has obtained applicable building permits for the Licensed Space, and 3) the date of commencement of construction set forth in the Development Plan, Licensee must begin construction of the Improvements under and consistent with the approved Construction Documents, in a diligent, first-class and workmanlike manner. Commissioner may require Licensee and its Subcontractors to meet with the Department's construction manager and Concessions Management Representative prior to starting construction. Among other requirements, the Improvements:

- (i) Must conform with all architectural, fire, safety, zoning and electrical codes and all federal, State, City and other local laws, regulations and ordinances pertaining to them, including the ADA, and all Riverwalk standards, procedures and regulations.
- (ii) Must be free and clear of any mechanics' or materialmen's liens or similar liens or encumbrances.
- (iii) Except as otherwise provided in this Agreement, must be completed entirely at Licensee's cost and expense and in accordance with the requirements of this Agreement including, but not limited to, the requirements and procedures set forth in the Riverwalk Concession Program Handbook.

- (iv) Upon the request of the Commissioner, Licensee must purchase and install a security camera and connect the camera feed into a junction box at a location to be determined by the Commissioner. Licensee will permit the Commissioner to connect the security camera to the Riverwalk security system.

Approval of the Construction Documents by the Commissioner does not constitute his or the City's representation or warranty as to their conformity with any architectural, fire, safety, zoning, electrical or building code, and responsibility therefore at all times remains with Licensee. Licensee must not permit its design and construction Subcontractors to make any modifications to Riverwalk infrastructure without prior written consent of the Commissioner.

G. Change Order Review. Licensee must cause all Work to be performed in a first class, good and workmanlike manner and in accordance with the Construction Documents. Licensee may request in writing that change orders relating to the Work be responded to by the City, and the City will so respond within 10 days, unless a response within 10 days is unreasonable in the circumstances, in which case the response period will be as reasonably determined by the City but in no event longer than 20 days. At all times during the Work, Licensee must have on file with the Commissioner and on the construction site for inspection by the Commissioner, a copy of the approved Construction Documents. Licensee must immediately begin to reconstruct or replace and diligently pursue to completion, at its sole cost and expense, before or after completion of the Work, any Work that is not performed in accordance with the Construction Documents as approved by the Commissioner.

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

I. Notice of Substantial Completion and Inspection. At least 10 days prior to anticipated substantial completion of the construction of a Licensed Space, Licensee must deliver to the Commissioner a “**notice of substantial completion**” in order for the Commissioner to schedule a representative to inspect the Improvements. On the date specified in the notice of substantial completion, the Department will perform a final inspection of the Improvements for compliance with the Construction Documents for the Improvements, and will, not later than 10 days after inspection, provide a punchlist to Licensee describing in sufficient detail any discrepancies between the Improvements and the Construction Documents. Licensee must cause all discrepancies (other than those approved by the Commissioner as variances) to be reconstructed, replaced or repaired in substantial accordance with the Construction Documents. Within 10 days after the date of substantial completion and prior to commencing Concession operations in Licensed Space, Licensee must provide, as evidence of the substantial completion of the Work, copies of any and all Certificates of Occupancy and other approvals, if any, necessary for Licensee to occupy the Licensed Space for its intended use. Licensee shall not commence Concession operations in the Licensed Space until such documents have been received by the Commissioner and until authorized to do so by the Commissioner.

J. Timeliness - Punch Lists; Opening for Business. Licensee acknowledges that if it fails to comply with Construction Document requirements (including all tasks necessary to satisfy them, such as, but not limited to, applying at the earliest possible time for and diligently pursuing all necessary building permits), the delay may cause the City to suffer substantial damages, including loss of goodwill, that might be difficult to ascertain or prove. For that reason, but subject to extensions that may be approved by the Commissioner, if Licensee has not caused the Improvements to be substantially completed in accordance with the Construction Documents and Concession Space to be open to the public for business not later than the scheduled Date of Beneficial Occupancy in the Development Plan:

- (i) Licensee must pay the City liquidated damages at the rate of \$1,000 per day for each day from and after the Date of Beneficial Occupancy, until the date on which the Concession Space actually opens to the public for business; and
- (ii) if, for any reason, Licensee fails to substantially complete the Improvements in accordance with the approved Construction Documents relating to them and open the Concession Space to the public for business within 30 days after the Date of Beneficial Occupancy, the failure is an Event of Default, and the City has the right to exercise any and all remedies under this Agreement, at law or in equity; and further,
- (iii) if Licensee is permitted to open for business in accordance with the schedule in the Construction Documents but any punchlist items are not completed within 30 days following the date on which Licensee opens to the public for business, the Commissioner will assess liquidated damages against Licensee at the rate of \$200 per day per punchlist item not timely completed; and
- (iv) if Licensee is permitted to open for business but any punchlist items are not completed within 60 days following the date on which Licensee opens to the public for business, the City reserves the right, at the Commissioner's sole discretion, to either:
 - a. complete the punchlist Work at the City's cost and bill the Licensee for this Work, in which case the charges are considered Additional Fees; or
 - b. close the affected Concession Space until all outstanding punchlist items are completed.

K. Post-construction Documentation. Licensee must submit a complete set of “**as-built**” drawings and documentation as outlined in the Riverwalk Concession Program Handbook to the Commissioner within 30 days after the date the Commissioner authorizes Licensee to begin Concession operations in the Licensed Space. The as-built drawings and documentation are and become the property of the City, except to the extent of any intellectual property reflecting Licensee's trademarks, trade names or trade dress contained in them.

L. Mechanic's Liens. Licensee must not permit any mechanic's lien for labor or materials furnished or alleged to have been furnished to it to attach to any portion of the Licensed

Space or the Riverwalk. Upon making payments to Subcontractors, Licensee must obtain from each Subcontractor a waiver of mechanic's liens against any portion of the Licensed Space or the Riverwalk arising out of any Work done by the Subcontractor and each and every of the Subcontractor's materialmen and workmen. If, nonetheless, any such mechanic's lien is filed upon any portion of the Licensed Space, or the Riverwalk, Licensee must indemnify, protect, defend and save harmless the City against any loss, liability or expense whatsoever by reason of the mechanic's lien and must promptly and diligently proceed with or defend, at its own expense, the action or proceedings as may be necessary to remove the lien. Licensee must deliver notice to the Commissioner of any such lien or claim within 15 days after Licensee has knowledge of it. Licensee may permit the mechanic's lien to remain undischarged and unsatisfied during the period of the contest and appeal; provided that, upon request by the Commissioner, Licensee must post a bond with the City equal to 150% of the amount of the lien. If the lien is stayed and the stay later expires or if by nonpayment of any lien any portion of the Licensed Space or the Riverwalk will be, or is claimed to be, subject to loss or forfeiture, then Licensee must immediately pay and cause to be satisfied and discharged the lien. If Licensee fails to do so, the Commissioner may, in his or her sole discretion, draw on the bond and make such payment and, in such event, the amount paid shall immediately be payable by Licensee to the City. Failure to post a bond when requested by the Commissioner or make the payment due shall be an Event of Default.

M. Mid-Term Refurbishment. Licensee must budget and expend such funds as necessary, but no less than 25 percent of the initial Improvement Costs, to undertake a mid-Term refurbishment of each Concession Space during or about the middle of the Term in order to ensure that each Concession Space presents a first-class appearance to the public. The minimum expenditure does not include financing costs, interest, inventory or intracompany charges of the Licensee. The scope and extent of the renovation, remodeling, upgrade and/or redecorating for such mid-Term refurbishment shall be jointly determined by the Commissioner and Licensee.

5.5 Damage or Destruction of Improvements.

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

B. Major Damage.

- (i) **"Major Damage"** means any damage or destruction that, based on reasonable estimates made by the Department within 60 days after the occurrence of the damage or destruction, in order to be repaired to the condition existing before the damage or destruction
 - a. would cost, with respect to the Improvements, in excess of 50% of the replacement cost value of all Improvements to the Licensed Space; and
 - b. would, with respect to Riverwalk infrastructure, require, in the sole judgment of the Commissioner, more than six months to complete.
- (ii) If any portion of the Riverwalk infrastructure suffers Major Damage, whether or not including any portion of the Licensed Space, in whole or in part by fire or other

casualty, the Commissioner has the right, for a period of six months starting on the date of the occurrence, to elect not to repair the Major Damage as otherwise required under this section, by giving written notice of the election to all licensees. If the Licensed Space is not affected by the Major Damage, Licensee may be required to continue Concession operations and pay Fees, in the sole discretion of the Commissioner. If the Licensed Space is rendered unusable for Concession operations, then Licensee must cease Concession operations and will not be required to pay Fees after the date of the occurrence of Major Damage but must pay all Fees otherwise owing prior to the date of occurrence. If the Commissioner elects not to repair the Major Damage, the Commissioner has the right to terminate, in the Commissioner's sole discretion, any or all license agreements, whether or not affected by the Major Damage, and relevant licensees must vacate the relevant licensed spaces.

- (iii) If any portion of the Licensed Space suffers Major Damage, and if after the occurrence of the damage the Agreement is not terminated at the sole discretion of the Commissioner, the Licensee will, in accordance with paragraph B(v) below, estimate the cost of restoration and the length of time that will be required to repair the damage and will notify City of the estimate, which estimate must be approved by the Commissioner. If the damage can be repaired and the Improvements restored before the Term expires, then Licensee must repair the damage and restore the Improvements. If repair and restoration cannot be substantially completed before the Term expires, then this Agreement terminates as of the date of the Major Damage.
- (iv) If this Agreement is not terminated in accordance with paragraphs (B)(ii) or (iii) and a casualty has damaged or destroyed any portion of the Riverwalk infrastructure involving the Licensed Space, the City will restore the Riverwalk infrastructure to the condition existing on the Delivery Date as nearly as possible, in the Commissioner's sole determination. Upon completion of the City's Riverwalk infrastructure restoration work, if any, Licensee must proceed to rebuild the Improvements as nearly as possible to the character of Improvements existing immediately before the occurrence.
- (v) Before beginning to replace, repair, rebuild or restore Improvements, Licensee must deliver to the Commissioner a report of an independent consultant acceptable to the Commissioner setting forth:
 - a. an estimate of the total cost of the Work;
 - b. the estimated date upon which the Work will be substantially completed;
and
 - c. a statement to the effect that insurance proceeds are projected to be sufficient to pay the costs of the Work.
- (vi) The Commissioner will use commercially reasonable efforts to provide suitable temporary space during the period of restoration subject to the reasonable approval of Licensee. Licensee must relocate the Concession operations to the temporary space, and the costs associated with any such relocation, including moving

expenses and the cost of reconstructing the Improvements in the temporary space, must be borne by Licensee.

C. Licensee's Option. If the Licensed Space is subject to Major Damage during the final three years of the Term, Licensee has the right, for a period of 60 days beginning on the date of the occurrence, to elect not to restore the affected Improvements as otherwise required under this Agreement by giving the Commissioner written notice of the election, in which event this Agreement will terminate upon the notice. If Licensee desires to rebuild the affected Improvements in the Licensed Space, it may do so only upon the written approval of the Commissioner.

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

5.6 City Resident Construction Worker Employment Requirement.

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

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

C. Inspection of Records. Each Employer must provide full access to its employment records to the Chief Procurement Officer, the Commissioner, the Superintendent of the Chicago Police Department, the Inspector General or any duly authorized representative of any of them. Each Employer must maintain all relevant personnel data and records for a period of at least 3 years after final acceptance of the Work. At the direction of the Commissioner, affidavits and

other supporting documentation may be required of each Employer to verify or clarify an employee's actual address when doubt or lack of clarity has arisen.

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

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

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

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

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

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

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

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

5.10 MBE/WBE Compliance. If Licensee's estimated Improvement Costs as set forth in the budget of its Development Plan are equal to or in excess of \$250,000 then Licensee shall make good faith efforts to meet the following goals with respect to participation of Minority Business Enterprises/Woman-Owned Business Enterprises (“MBE/WBE”) in the design and construction of Licensee's Improvements, respectively: (i) Design: 25% MBE and 5% WBE; and (ii) Construction: 30% MBE and 8% WBE. The Special Conditions and related forms used by the City in its own procurements are attached hereto as Exhibit 7 and should be used by Licensee's Contractors. Licensee must submit to the CMR completed Schedules C's and D's from its design and construction Contractors demonstrating their percentage MBE and WBE participation commitments, and their good faith efforts to achieve the foregoing goals if the commitments are less than those goals. Thereafter, Licensee must submit periodic reports to the CMR, in a form and frequency determined by the Commissioner, documenting its Contractors' compliance with their commitments.

ARTICLE 6 TERM OF AGREEMENT

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

6.2 Return of the Licensed Space and Removal of Improvements.

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

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

C. Further, at the Commissioner's request (which request will be given in writing at least 30 days before the expiration or as soon as possible after termination of the Term), Licensee must remove all Improvements installed by or for Licensee, or Licensee's agents, employees or Subcontractors, except for Improvements that the Commissioner may elect to require Licensee to leave in place. As provided in Section 5.2, all Improvements are City property and, if not requested to be removed by the Commissioner, may be used by the City or a replacement Licensee; provided, however, that all of Licensee's trade dress, service marks, trademarks and trade names shall be removed, obliterated or painted out in a commercially reasonable manner at Licensee's cost. If directed by the Commissioner to remove Improvements, Licensee must also secure any plumbing and remove, obliterate or paint out any and all of its signs, advertising and displays as the Commissioner or his designated representative may direct, and repair any holes or other damage left or caused by Licensee.

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

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

6.3 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 Licensed Space 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 Licensed Space, 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 Licensed Space 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 Licensed Space 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 Licensed Space, 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 ninety (90) days prior written notice to Licensee. Upon the effective date set forth in such notice, Licensee shall vacate the Licensed Space as if the Agreement had expired on that date. In the event of such early termination, the City shall pay to Licensee a "Licensed Space Termination Payment", which shall be defined herein to be a sum equal to the unamortized balance of Licensee's Improvement Costs, depreciated using the straight-line method over 60 months commencing on the Date of Beneficial Occupancy of the Licensed Space. Upon Licensee's receipt of the Licensed Space Termination Payment and vacation of the Licensed Space, the City and Licensee shall thereafter be released from any and all obligations under this Agreement with respect to the Licensed Space except for such obligations which are expressly stated to survive the expiration or earlier termination of this Agreement.

ARTICLE 7 FEES

7.1 Fees Payable.

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

- (i) License Fee. The "**License Fee**" is a lump sum annual fee that is payable in equal quarterly installments on the first day of each calendar quarter (January, April, July, October). The License Fee will begin to accrue on the Effective Date 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 for partial calendar quarter occupancy. In each succeeding License Year following the initial License Year, the License Fee applicable to the Licensed Space will increase by 3% over the previous License Year.

- (ii) Percentage Fee. The “**Percentage Fee**” is an amount equal to the Percentage Rate set forth in Exhibit 2 multiplied by Gross Revenues for each License Year, including the Initial License Year. The Percentage Fee is due annually on or before February 15 of the succeeding License Year. The Percentage Rate applicable to this Agreement is ____%.
- (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 Licensed Space, Licensee's Concession business or upon Licensee's personal property, including but not limited to all permit fees and charges of a similar nature for Licensee's conduct of any business or undertaking in the Licensed Space (collectively, “**Impositions**”). Licensee must provide the 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 quarter, prorated for any partial calendar quarter, beginning on the Date of Beneficial Occupancy and continuing throughout the Term, Licensee must pay to the City the License Fee.

B. On or before the 15th day of February, Licensee must pay the Percentage Fee for the preceding year as well as provide the City a certified statement of Gross Revenues.

7.3 Material Underpayment or Late Payment.

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

- (i) Licensee underpaid Fees due in any calendar year by more than 5%, or

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

7.4 Reports.

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

B. Daily and/or Weekly. Licensee will furnish to the Commissioner daily and/or weekly sales reports, if requested, breaking down all sales and Gross Revenues by each separate Concession Space. 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 certified by an certified public accountant engaged by Licensee, showing in all reasonable detail the amount of Gross Revenues made by Licensee in, on or from the Licensed Space during the preceding License Year and copies of all returns and other information filed with respect to Illinois sales and use taxes as well as such other reasonable financial and statistical reports as the Commissioner may, from time to time, require by written notice to Licensee.
- (ii) The annual statement must include a breakdown of Gross Revenues on a month-by-month basis. 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 6 covering all operations under this Agreement, with insurance companies authorized to do business in the State of Illinois.

8.2 Indemnification.

Licensee must defend, indemnify, keep and hold harmless the City, its officers, representatives, elected and appointed officials, agents and employees (collectively, the "Indemnified Parties,") from and against any and all Losses (as defined below), in consequence of the granting of this Agreement or arising out of or being in any way connected with the Licensee's performance under this 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 otherwise to pay or perform its obligations to any subcontractor; the City's exercise of its rights

and remedies under this 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. 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, 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) Licensee must deliver to the City no later than the earlier to occur of: a) 30 days after the Effective Date or b) the Delivery Date for the first Licensed Space, 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 maintained by Licensee, through and including the date that is 180 days after the expiration of the Term or termination of this Agreement, as follows: the face amount of the Letter of Credit must at all times equal 50% of the License Fee due in the License Year following the Initial License Year. The Letter of Credit must be in the form set forth in Exhibit 5 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. 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. 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 Licensed Space 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 45 days from delivery of the notice, Licensee will have the additional time, not in any event to exceed 45 days, to cure the failure.

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

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

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

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

E. Licensee's or its contractors' failure to provide or maintain the insurance coverage required under this Agreement (including any material noncompliance 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 Licensed Space.

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

I. Licensee or 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 Licensed Space. If the Commissioner elects to terminate this Agreement, the Commissioner may, at the Commissioner's sole option, serve notice upon Licensee that this Agreement ceases and expires and becomes absolutely void with respect to the Licensed Space on the date specified in the notice, to be no less than five days after the date of the notice, without any right on the part of Licensee after that to save the Agreement by payment of any sum due or by the performance of any term, provision, covenant, agreement or condition broken. At the expiration of the time limit in the notice, this Agreement wholly ceases and expires and becomes void with respect to the Licensed Space in the same manner and with the same force and effect (except as to Licensee's liability 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 Licensed Space, the damages will include any and all amounts that Licensee would have been obligated to pay for the balance of the Term with respect to the Licensed Space, calculated as provided in this Agreement or, if not fixed, as reasonably estimated; provided, however, that such damages based on Fees that Licensee would have been obligated to pay will cease when and if City executes a license agreement with a replacement licensee for the Licensed Space but only to the extent that the Fees paid by the replacement licensee equal or exceed the Fees that Licensee would have been obligated to pay. In determining the amount of damages for the period after termination, the Commissioner may make the determination based upon the sum of any future payments that would have been due to the City, for the full License Year immediately before the Event of Default.

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

B. The City's waiver of any one right or remedy provided in this Agreement does not constitute a waiver of any other right or remedy then or later available to the City under this Agreement or otherwise. A failure by the City or the Commissioner to take any action with respect to any Event of Default or violation of any of the terms, covenants or conditions of this Agreement by Licensee will not in any respect limit, prejudice, diminish or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous or later violation or Event of Default or with respect to any continuation or repetition of the original violation or Event of Default. The acceptance by the City of payment for any period or periods after an Event of Default or violation of any of the terms, conditions and covenants of this Agreement does not constitute a waiver or diminution of 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 8 and which contains a certification as required under the Illinois Criminal Code, 720 ILCS 5/33E, and under the Illinois Municipal Code, 65 ILCS 5/8 10 1 et seq. Ineligibility under Section 2 92 320 of the Municipal Code continues for 3 years following any conviction or admission of a violation of Section 2-92-320. For purposes of Section 2 92 320, when an official, agent or employee of a business entity has committed any offense under the section on behalf of such an entity and under the direction or authorization of a responsible official of the entity, the business entity is chargeable with the conduct. If, after Licensee enters into a contractual relationship with a Subcontractor, it is determined that the contractual relationship is in violation of this subsection, Licensee must immediately cease to use the Subcontractor. All Subcontracts must provide that Licensee is entitled to recover all payments made by it to the Subcontractor if, before or subsequent to the beginning of the contractual relationship, the use of the Subcontractor would be violative of this subsection.

B. It is the duty of Licensee and all officers, directors, agents, partners, and employees of Licensee to cooperate with the Inspector General of the City in any investigation or hearing undertaken under Chapter 2 56 of the Municipal Code. Licensee understands and will abide by all provisions of Chapter

2 56 of the Municipal Code. Licensee must inform all Subcontractors of this provision and require under each Subcontract compliance herewith by each Subcontractor as to each such Subcontractor and all of its officers, directors, agents, partners and employees.

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

D. In accordance with Section 11-4-1600(e) of the Municipal Code, 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, 2022, the Minimum Wage to be paid under City contracts or concessionaire agreements pursuant to Order 2014-1 is \$16.00 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, 2022, the amount to be paid when taking an allowance for gratuities, is \$8.20 per hour. On or before June 1 of each year, the City will make available to the Licensee a bulletin announcing the adjusted minimum hourly wages for the upcoming year.

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

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

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

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

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 8. All notices or communications from Licensee to the City must be addressed to:

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

SIGNED:

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: _____

EXHIBIT 1
LICENSED SPACE

The Licensed Space is located at [specify which Riverwalk Address] and consists of ____ location(s) with a total of approximately ____ square feet of Concession Space and approximately ____ square feet of Storage Space as further depicted in the License outline drawings attached hereto.

EXHIBIT 2

TERM SHEET FOR CONCESSION LICENSE AGREEMENT (“AGREEMENT”)

between

THE CITY OF CHICAGO (“CITY”)

and

_____ (“LICENSEE”)

at

CHICAGO RIVERWALK

The following is a summary of key provisions in this Agreement. *This summary is provided for your convenience only.* In the event of a conflict between this summary and the language contained in the Agreement, the language in the Agreement controls.

1. **Licensee Name:**
2. **License Term:**
3. **Term Extension:**
4. **Licensed Space Location(s):**
5. **Nature of Concession:**
6. **License Fee Annually:**
7. **License Fee each Quarter:**
8. **Percentage Rate:**
9. **Days and Hours of Operation:**
10. **Licensee Operating Season:**
11. **Utilities:** All utilities provided by Licensee.
12. **Delivery Location and Hours:**
13. **Additional Space:**
14. **DBO:**

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

EXHIBIT 4
PRODUCTS AND PRICE LIST- MENU

[Attached]

EXHIBIT 5
FORM OF LETTER OF CREDIT
SAMPLE FORM OF LETTER OF CREDIT

Issuing Bank Letterhead

(must be a bank located in the Chicago metropolitan area)

Irrevocable Standby Letter of Credit

Letter of Credit No.

Date: _____, 20__

Chicago Department of Assets, Information and Services

2 North LaSalle Street, Suite 200

Chicago, Illinois 60602

Attention: Commissioner

1. We hereby open in your favor, at the request and for the account of this irrevocable standby letter of credit in an aggregate amount not to exceed _____ Dollars (\$_____) ("Stated Amount"), to be available for payment of your drafts drawn at sight on us signed by the Commissioner of the Chicago Department of Assets, Information and Services, or Commissioner's designee.
2. Your sight drafts must be accompanied by a written certificate, in the form of Exhibit A attached hereto (the "Certificate") signed and completed by you.
3. Partial and multiple drawings are permitted hereunder.
4. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by any document, instrument or agreement referred to herein, or in which this Letter of Credit is referred to, or to which this Letter of Credit relates; and no such reference shall be deemed to incorporate herein by reference any such document, instrument or agreement. The Account Party is not the owner or beneficiary under this Letter of Credit and possesses no interest whatsoever in this Letter of Credit or its proceeds. Further, this Letter of Credit shall not be affected by any bankruptcy or other insolvency proceeding initiated by or against the Account Party.
5. This credit shall expire on _____, 20__, unless extended as provided herein.
6. It is a condition of this credit that it will be automatically extended without amendment for an additional period of twelve (12) months from the present and each future expiry date, unless, not less than ninety (90) days prior to the then relevant expiry date, we notify you and Corporation Counsel of the City by registered mail, return receipt requested, that we elect not to extend this credit for any additional period. Upon receipt of such a notification you may draw your sight draft on us prior to the then-relevant expiration date for the unused balance of this credit, which shall be accompanied by your signed written statement that you received notification of our election not to extend.
7. Drafts must be marked "Drawn under irrevocable Standby Letter of Credit No. _____."
8. We hereby agree to honor each draft drawn under and in compliance with the terms of this credit if duly presented at our offices on or before the close of business on the expiry date.

9. This Letter of Credit sets forth in full the terms of our undertaking, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement.
10. This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits, International Chamber of Commerce Publication No. 500, 1993 revision, ("IUCP") and to the Uniform Commercial Code - Letters of Credit, as adopted in Illinois, 810 ILCS 5 -101 et seq., as amended ("UCC"). To the extent that the provisions of the IUCP and UCC conflict, the provisions of the UCC shall govern.
11. We hereby undertake that a draft drawn in conformity with the terms of this Letter of Credit will be duly honored on presentation.

By: _____

Name: _____

Title: _____

**THIS IS AN INTEGRAL PART OF STANDBY LETTER OF CREDIT
NO. _____**

EXHIBIT A

CERTIFICATE FOR DRAWING

The undersigned, the Commissioner of the Chicago Department of Assets, Information and Services, represents, warrants and certifies to _____ (the "Bank") with reference to Letter of Credit No. _____ issued by the Bank in favor of the City of Chicago (the "Beneficiary") that:

1. A breach of the Chicago Riverwalk Concession License Agreement ("Agreement") dated as of _____, 20____, as amended, modified or supplemented, between the City of Chicago ("City") and _____, an _____, has occurred, or a replacement Letter of Credit in a form and substance satisfactory to the City Comptroller has not been issued to the City by a financial institution meeting the requirements set forth in the Agreement. As a result, the City is making demand under the Letter of Credit to pay _____ dollars (\$ _____) on the _____ day of _____, 20____.

2. Payment of the draft shall be made by bank wire paid to our account as per our wire instructions below:

_____	(Name	of	Bank)
_____	(City	&	State)
_____	(ABA No.)		
_____	(Account Name)		
_____	(Account No.)		
_____	(Reference No., if any)		

3. All defined terms used but not defined herein shall have the meaning assigned hereto in the Letter of Credit.

In witness hereof, the City has executed this certificate as of this _____ day of _____, 20____.

CITY OF CHICAGO

BY: _____

Its: Commissioner of the Department of Assets, Information and Services

EXHIBIT 6
INSURANCE REQUIREMENTS

[Attached]

INSURANCE REQUIREMENTS APPLICABLE TO ALL LICENSEES

A. INSURANCE REQUIRED

Licensee must provide and maintain at Licensee's own expense, during the term of the Agreement and during the time period following expiration if Licensee 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 \$500,000 each accident; \$500,000 disease-policy limit and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Licensee 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 Licensee'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 Licensee's acts or omissions, whether such liability is attributable to the Licensee 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. Licensee's liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Licensee 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 Licensee 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.

Licensee 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.

Licensee 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) Liquor Liability

(i) When applicable, Liquor Liability (“Dram Shop”) Insurance must be obtained with limits of not less than \$1,000,000 per occurrence. Coverage must include but not be limited to the following: off-site coverage, assault and battery coverage, and common law. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the services.

6) Property

Licensee 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 Licensee and for loss or damage to property in the Licensee’s care, custody and control.

B. Additional Requirements

Evidence of Insurance. Licensee must furnish the City of Chicago, Department of Fleet and Facility Management, Attn: Bureau of Asset Management, 30 North LaSalle Street, Suite 300, 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. Licensee 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. Licensee 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 Licensee 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 Licensee to comply with required coverage and terms and conditions outlined herein will not limit Licensee's liability or responsibility nor does it relieve Licensee 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. Licensee 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 Licensee.

Waiver of Subrogation. Licensee 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. Licensee 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 Licensee's insurer(s).

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

No Limitation as to Licensee's Liabilities. The coverages and limits furnished by Licensee in no way limit the Licensee'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 Licensee 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 Licensee 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 Licensee. 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 Licensee 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 Licensee. If Licensee desires additional coverages, the Licensee will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Licensee shall name the Subcontractor(s) as a named insured(s) under Licensee's insurance or Licensee 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 Licensee. Licensee shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Licensee 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. Licensee 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, Licensee 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 Licensee'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.

**INSURANCE REQUIREMENTS APPLICABLE TO CONSTRUCTION ON THE CHICAGO
RIVERWALK**

A. INSURANCE REQUIRED

Licensee shall cause its contractors (each a “Contractor”) to provide and maintain at Contractor's (or Licensee’s) own expense until completion of the construction work (as determined by the City) and during the time period following completion if Contractor 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 construction contract (“Contract”).

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 the Contract and Employers Liability coverage with limits of not less than \$500,000 each accident; \$500,000 disease-policy limit; and \$500,000 disease-each employee, or the full per occurrence limits of the policy, whichever is greater.

Contractor 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 and the Licensee/Licensee must be provided additional insured status with respect to liability arising out of Contractor’s work, services or operations and completed operations performed on behalf of the City. Such additional insured coverage must be provided on ISO form CG 2010 or on an endorsement form at least as broad for ongoing operations and completed operations. The City’s additional insured status must apply to liability and defense of suits arising out of Contractor’s acts or omissions, whether such liability is attributable to the Contractor or 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. Contractor’s liability insurance must be primary without right of contribution by any other insurance or self-insurance maintained by or available to the City.

Contractor 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 Contractor or cause to 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 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 and the Licensee/Licensee are to be added as additional insureds on a primary, non-contributory basis.

Contractor 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.

Contractor 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) Contractors Pollution Liability – (If Applicable)

When any work performed involves a potential pollution risk that may arise from the operations of Contractor's scope of services Contractors Pollution Liability must be provided or caused to be provided, covering bodily injury, property damage and other losses caused by pollution conditions with limits of not less than \$2,000,000 per occurrence. Coverage must include but not be limited to completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal and if applicable, include transportation and non-owned disposal coverage. When policies are renewed or replaced, the policy retroactive date must coincide with or precede start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City and the Licensee/Licensee are to be named as additional insureds.

6) Builders Risk/Installation – (If Applicable)

When any construction, or major installation projects is undertaken on the property including improvements, betterments, and/or repairs, the Contractor must provide or cause to be provided, All Risk Builders Risk/Installation Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the permanent facility or project. The City of Chicago and the Licensee/Licensee are to be named as additional insureds and loss payees.

The Contractor is responsible for all loss or damage to personal property (including materials, equipment, tools and supplies) owned, rented or used by Contractor.

B. Additional Requirements

Evidence of Insurance. Contractor must furnish the Licensee/Licensee and the City of Chicago, Department of Fleet and Facility Management, 30 North LaSalle Street, Suite 300, 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 Contract, 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 the Contract. Contractor must submit evidence of insurance prior to execution of the Contract. The receipt of any

certificate does not constitute agreement by the City that the insurance requirements in this Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all requirements of this 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 Contractor, 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. Contractor 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 Contractor for liabilities which may arise from or relate to the Contract.

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

Waiver of Subrogation. Contractor 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 Contract. Contractor 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 Contractor's insurer(s).

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

No Limitation as to Contractor's Liabilities. The coverages and limits furnished by Contractor in no way limit the Licensee's or Contractor's liabilities and responsibilities specified within this 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 Contractor 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 Contractor 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 Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensee/Licensee and the City.

Joint Venture or Limited Liability Company. If Contractor 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 Contractor. If Contractor desires additional coverages, the Licensee or Contractor will be responsible for the acquisition and cost.

Insurance required of Subcontractors. Contractor shall name the Subcontractor(s) as a named insured(s) under Contractor's insurance or Contractor 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 Contractor. Contractor shall determine if Subcontractor(s) must also provide any additional coverage or other coverage outlined in Section A, Insurance Required. Contractor is responsible for ensuring that each Subcontractor has named the City as an additional insured where required and name the City as an additional insured on an endorsement form acceptable to the City. Contractor 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, Contractor 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 Contractor's liability or responsibility.

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

EXHIBIT 7
MBE\WBE SPECIAL CONDITIONS AND RELATED FORMS
[Attached]

EXHIBIT 8
ECONOMIC DISCLOSURE STATEMENT
[Attached]

EXHIBIT 9
CHICAGO RIVERWALK CONCESSIONS PROGRAM HANDBOOK

www.chicago.gov/city/en/sites/chicagoriverwalk/home/concession-program.html