City of Chicago

O2018-642

Office of the City Clerk

Document Tracking Sheet

Meeting Date:	1/17/2018
Sponsor(s):	Emanuel (Mayor)
Type:	Ordinance
Title:	Concession license agreement with Spice Inc. d/b/a The Northman, on Chicago Riverwalk
Committee(s) Assignment:	Committee on Housing and Real Estate

ORDINANCE

WHEREAS, the Chicago Riverwalk ("Riverwalk") is a 1.25 mile long path adjacent to the south bank of the main branch of the Chicago River; and

WHEREAS, the City of Chicago Department of Fleet and Facility Management ("2FM") wishes to enter into agreements with licensees for the operation of concessions on the Riverwalk, including concepts offering food and beverage, recreational, retail, cultural or educational activities for the public designed to bring additional visitors to the Riverwalk; and

WHEREAS, the City of Chicago Department of Procurement Services, on behalf of 2FM, issued a Request for Proposals ("RFP") to all interested Riverwalk proposers in January 2017, and, after evaluating responses, the City selected the best value respondents ("Licensees") with whom to negotiate license agreements; and

WHEREAS, one of the Licensees is: Spice Inc. d/b/a The Northman ("Licensee");

WHEREAS, 2FM and Licensee have agreed to the terms of the agreement ("License Agreement"), which is attached hereto as Exhibit A; and

WHEREAS, Section 10-36-145(d) of the Municipal Code of Chicago authorizes the Commissioner, after publicly soliciting proposals, to negotiate and execute on behalf of the City concession agreements for food, beverages, goods and services within the Chicago Riverwalk for a total term not to exceed 60 months including extensions;

WHEREAS, the License Agreement has a 10-year initial term with two 5-year extension options at the Commissioner of 2FM's sole discretion, and therefore requires City Council approval; and

WHEREAS, 2FM wishes for the City Council to authorize 2FM to negotiate and enter into such License Agreement;

NOW THEREFORE, it is ordained by the City Council of the City as follows:

1. The recitals are incorporated herein.

2. The Commissioner of the Department of Fleet and Facility Management is authorized to negotiate and enter into a License Agreement with the Licensee identified above. Such License Agreement shall be in substantially the form attached hereto as Exhibit A, with such other terms as determined by the Commissioner to be necessary and reasonable. The Commissioner is authorized to enter into such other ancillary documents as are necessary in connection with the License Agreement.

3. This ordinance is effective upon its passage and approval.

Exhibit A
License Agreement

CHICAGO RIVERWALK CONCESSION LICENSE AGREEMENT

BETWEEN

THE CITY OF CHICAGO
(CHICAGO DEPARTMENT OF FLEET AND FACILITY MANAGEMENT)

AND

Spice Inc. d/b/a The Northman

RAHM EMANUEL
MAYOR

DAVID J. REYNOLDS
COMMISSIONER

TABLE OF CONTENTS

ARTICLE 1 CITY APPROVAL 5
ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS 6
2.1 Incorporation of Background. 6
2.2 Incorporation of Exhibits. 6
ARTICLE 3 DEFINITIONS 6
3.1 Interpretation and Conventions 6
3.2 Definitions 7
ARTICLE 4 LICENSE AND LICENSEE'S OPERATIONS 11
4.1 License. 11
4.2 No Sublicenses, Assignments or Other Uses. 12
4.3 General Requirements for Operation of Concessions. 12
4.4 Hours of Operation. 13
4.5 Personnel 14
4.6 Operation and Maintenance. 15
4.7 Utilities. 17
4.8 Refuse Handling. 17
4.9 Promotion. 18
4.10 Distribution and Storage; Deliveries. 18
4.11 Certain Rights Reserved By the City. 18
ARTICLE 5 LICENSED SPACE AND IMPROVEMENTS 20
5.1 Licensed Space. 20
5.2 Title to Property in the Licensed Space. 21
5.3 Licensee's Improvement Obligations. 21
5.4 Work Requirements. 22
5.5 Damage or Destruction of Improvements. 26
5.6 City Resident Construction Worker Employment Requirement. 27
5.7 Licensing of General Contractor. 29
5.8 Prevailing Wages. 29
5.9 Subcontractor Certifications. 29
5.10 MBE/WBE Compliance. 30
ARTICLE 6 TERM OF AGREEMENT 30
6.1 Term. 30
6.2 Return of the Licensed Space and Removal of Improvements. 30
6.3 Termination Due to Change in Riverwalk Operations. 31
6.4 Eminent Domain. 31
6.5 Early Termination. 32
ARTICLE 7 FEES 32
7.1 Fees Payable. 32
7.2 Time of Payments. 33
7.3 Material Underpayment or Late Payment 33
7.4 Reports. 33
7.5 Books, Records and Audits 34

7.6 Revenue Control. 36
7.7 Lien. 36
ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY 36
8.1 Insurance. 36
8.2 Indemnification. 36
8.3 Security. 37
ARTICLE 9 DEFAULT, REMEDIES AND TERMINATION 39
9.1 Events of Default. 39
9.2 Remedies. 40
9.3 Effect of Default and Remedies 42
ARTICLE 10 SPECIAL CONDITIONS 42
10.1 Warranties and Representations. 42
10.2 Business Documents, Disclosure of Ownership Interests and Maintenance of Existence. 46
10.3 Licenses and Permits. 46
10.4 Confidentiality. 46
10.5 Subcontracts and Assignments. 46
10.6 Compliance with Laws. 49
10.7 Non-Discrimination. 52
10.8 National Emergency. 54
10.9 2014 Hiring Plan Prohibitions 54
10.10 Multi-Project Labor Agreement. 55
10.11 Minimum Wage. 55
ARTICLE 11 GENERAL CONDITIONS 56
11.1 Entire Agreement. 56
11.2 Counterparts. 57
11.3 Amendments. 57
11.4 Severability. 57
11.5 Covenants in Subcontracts. 57
11.6 Governing Law. 57
11.7 Notices. 58
11.8 Successors and Assigns; No Third Party Beneficiaries. 58
11.9 Subordination. 58
11.10 Conflict. 59
11.11 Offset by Licensee. 59
11.12 Waiver; Remedies. 59
11.13 Authority of Commissioner. 59
11.14 No Personal Liability. 59
11.15 Limitation of City's Liability. 60
11.16 Joint and Several Liability. 60
11.17 Non-Recordation. 60
11.18 Survival. 60
11.19 Force Majeure. 60
SIGNATURE PAGE 62
EXHIBIT 1 - LICENSED SPACE 63
EXHIBIT 2 – TERM SHEET 64

EXHIBIT 3 - DEVELOPMENT PLAN 69
EXHIBIT 4 - PRODUCTS AND PRICE LIST- MENU 72
EXHIBIT 5 - FORM OF LETTER OF CREDIT 74
EXHIBIT 6 - INSURANCE REQUIREMENTS AND INSURANCE CERTIFICATE 78
EXHIBIT 7 - MBE/WBE SPECIAL CONDITIONS, RELATED FORMS, AND COMPLIANCE PLAN 91
Attachment A –Assist Agency List 106
Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals 108
Schedule B – Affidavit of Joint Venture 109
Schedule C-1: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant 114
Schedule D-1: Affidavit of Implementation of MBE/WBE Goals and Participation Plan 115

CHICAGO RIVERWALK CONCESSION LICENSE AGREEMENT

This Chicago Riverwalk Concession License Agreement ("**Agreement**") is entered into as of _____, 2018 by and between Spice Inc., a(n) Illinois corporation, doing business as The Northman ("**Licensee**"), and the City of Chicago, a municipal corporation and home rule unit of local government under the Constitution of the State of Illinois ("**City**"), acting through its Chicago Department of Fleet and Facility Management ("2FM" or "**Department**").

BACKGROUND

The City owns the Chicago Riverwalk, and the Commissioner of 2FM of has the authority to operate, manage and maintain the Chicago Riverwalk, including the authority to enter into concession agreements for 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). With City Council approval, 2FM may enter into agreements of longer duration. The City has determined that it is the best interest of the City to enter into concession agreements for food, beverages, goods and services within the Chicago Riverwalk for varying terms, including terms for some agreements that exceed the Commissioner's 36/60 months authority specified above (and thus requires City Council approval) in order to allow concessionaires to make capital improvements to certain spaces, thereby better serving Riverwalk patrons by providing first-class food, beverage, retail and service facilities. Activities on the Chicago River are also subject to provisions of the Chicago Municipal Code, including authority granted to the Chicago Department of Transportation in Section 10-40 of the Chicago Municipal Code.

Pursuant to this desire, 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 a cider-focused restaurant, outdoor café and take away market. 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 2FM or any representative authorized in writing to act on the Commissioner's behalf. As provided in Section 11.13, where the approval or consent of the City is required under this Agreement, unless expressly provided otherwise in this Agreement, it means approval or consent of the Commissioner or the Commissioner's authorized representative. As provided in Section 11.3, unless expressly provided otherwise in this Agreement, any amendment of this Agreement will require execution by the Commissioner or his proxy. As further provided in Section 11.3, any substantial amendment of the terms of this Agreement will require approval by the City Council, if Council approval was required for authority to enter into this Agreement at its inception.

ARTICLE 2 INCORPORATION OF BACKGROUND AND EXHIBITS

2.1 Incorporation of Background.

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

2.2 Incorporation of Exhibits.

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

Exhibit 1	Licensed Space(s) 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

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.

"Chicago Riverwalk Concession Program Handbook" (RCPM) means the handbook developed by 2FM to govern the uniform and consistent design and operation of the concessions program at the Chicago Riverwalk. The Riverwalk Concession Program Handbook is available on the Chicago Riverwalk website (currently available at https://www.chicagoriverwalk.us/concession-handbook) and may be amended from time to time by the Department. Any amendment of the 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, provided that the amendment of 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 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 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 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 a 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.

"Default Rate" means 10% per annum.

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

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

"Development Plan" means, as further described in Section 5.4, the Licensee's conceptual plans, budget and other design specifications for construction of its Improvements and its schedule for commencement of retails 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 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. As set forth in Article 4, Licensee was selected by the City specifically to sell the Products identified in Exhibit 4 and is not permitted to sell any items or types of items not identified in Exhibit 4, increase the prices of any items or types of items identified in Exhibit 4, or conduct any other business from the Licensed Space unless otherwise agreed in writing by the Commissioner.

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

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

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

"Term" means the period of time beginning on the Effective Date and ending at 11:59

p.m. on the tenth anniversary of the DBO of the Concession Space. If so specified in the RFP, the Term may be extended up to an additional ten years (two possible five (5) year extensions) at the Commissioner's sole option.

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

ARTICLE 4 LICENSE AND LICENSEE'S OPERATIONS

4.1 License.

A. Effective as of the Effective Date, the City, in consideration of the payment of the Fees, hereby grants the non-exclusive privilege to the Licensee to operate a Concession 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 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 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; or

(v) would involve any illegal purposes.

4.2 No Sublicenses, Assignments or Other Uses.

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

4.3 General Requirements for Operation of Concessions.

Licensee has the authority to manage and administer the Concession in the Licensed Space, subject to the rights of the City under the law, in equity, and under this Agreement to direct Licensee in order to ensure that the 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 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. Subject to any requirements or restrictions imposed by law, Licensee may also use the name "The Northman on the River."

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 Riverwalks, and not as a penalty, the amount of $100 for each non-compliant practice, appearance or condition specified in the notice that remains uncured after the cure period.

D. Licensee must neither commit nor allow any nuisance, noise or waste in the Licensed Space or annoy, disturb or be offensive to others in the 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 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 General Manager is subject to removal at the direction of the Commissioner if the Commissioner reasonably determines, in her sole discretion, that the General Manager is not performing up to standards consistent with the fulfillment of Licensee's obligations.

C. Salaries. Salaries of all employees of Licensee and its Subcontractors performing services or Work under this Agreement must be paid unconditionally and not less often than once a month without deduction or rebate on any account, except only for those payroll deductions that are mandated by law or permitted by the applicable regulations issued by the United States Secretary of Labor under the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; 18 U.S.C. § 874, and 40 U.S.C. § 276c). Licensee must comply with all applicable "Anti-Kickback" regulations and must insert appropriate provisions in all Subcontracts covering Work under this Agreement to insure compliance of all Subcontractors with those regulations and with the other requirements of this subsection, and is responsible for the submission of affidavits required under them, except as the United States Secretary of Labor may specifically provide for variations of, or exemptions from, the requirements of them.

4.6 Operation and Maintenance.

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

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

(iv) Licensee must maintain all fire detection and fire suppression systems and mechanisms, if required by Building Code, in accordance with all applicable laws, codes and the requirements of all applicable policies of insurance and insurance inspectors and of the City. Licensee must not cause or permit any damage to insulation and fire protection materials surrounding the black iron duct. In addition to Licensee's obligation to maintain utility lines in the Licensed Space as set forth in Section 4.8 below, Licensee must install and maintain in good working order and in accordance with the rules and regulations of all insurers and applicable laws, codes, and regulations of any governmental authority, all fire extinguishing systems in the Licensed Space.

(v) Upon request, Licensee must provide 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 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 their Concession License Agreement. Without limiting the generality of the foregoing, Licensee shall not use the common areas to canvass, solicit business or information from, or distribute any article or material to, other Licensees, users, patrons, or visitors to 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 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 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 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.

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 2FM. 2FM 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 are expected to fully comply with 2FM'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.

A. Signs and Advertising. Licensee may, at its own expense and subject to obtaining any necessary permits, install and operate necessary and appropriate identification signs in and on the Concession Space for its promotional use (identifying the Concession operations at the Concession Space in question or the Products sold there). All such signage (especially all signage visible from the Common Areas) must be in compliance with signage and other applicable criteria adopted by the Commissioner or other City agencies from time to time and subject to the prior written approval of the Commissioner as to the number, size, height, location and design (as applicable). Licensee must not install, affix, or display any signage outside the Concession Space except as permitted by the Department. Without the prior written consent of the Commissioner, Licensee and its Subcontractors must not distribute any advertising, promotional or informational pamphlets, circulars, brochures or similar materials anywhere within the 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 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) Keys to the Licensed Spaces, including master keys and passkeys, to all doors within and into the Licensed Spaces will at all times be kept under adequate and appropriate security by the Department. Licensee must not change any locks, nor affix locks on doors. Notwithstanding the provisions for the Department's access to the Licensed Spaces, Licensee releases the City from all responsibility arising out of theft, robbery, pilferage and personal assault. Upon the expiration or termination of the Term of this Agreement, Licensee must return all keys to the 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 Riverwalks 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 Riverwalk or the Licensed Space and within the 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 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 Riverwalks and the Licensed Space;

(vi) Show the Licensed Space to prospective Licensees at reasonable times and, if vacated or abandoned, prepare the Licensed Space for re-licensing;

(viii) Erect, use and maintain pipes, ducts, wiring and conduits, and appurtenances to them, in and through the Licensed Spaces at reasonable locations;

(ix) Enter the Licensed Space for the purpose of periodic inspection for fire protection, maintenance and compliance with the terms of this Agreement, including but not limited to the 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;

(x) Grant to any person the right to conduct any business or render any service in or to the Riverwalk.

(xi) Promulgate from time to time rules and regulations regarding the operations at the Riverwalk; and

B. Licensee will be solely responsible for installation and maintenance of all sprinkler systems, whether or not Licensee was required to install such sprinkler systems. If any sprinkler work requires a temporary shut-down and/or drainage of the sprinkler system or portion thereof in the 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.

D. 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, subject to the Commissioner's approval after determining that such costs are reasonable and consistent with the Development Plan. If the Commissioner in his sole discretion deems any of the Improvement Costs to be unreasonable, the City and Licensee will discuss and agree on a reasonable amount for the Improvement Costs. 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

(iii) 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 RCPM 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 RCPM, Licensee must, on notice from the City, cause repairs to be made so that Licensee is in compliance with this requirement.

C. Development Plan. Licensee's Development Plan, as approved by the Commissioner, is attached hereto as Exhibit 3. It describes and depicts the Licensee's thematic concept for the Concession Space (including storefront design images, as appropriate), floor plan(s) and dimensions of the Concession Space, surrounding landscaping Improvements (if any), a detailed description of the nature and scope of Improvements with dimensions, its implementation plan and detailed schedule for implementing the Improvements and commencing Concession operations in the Licensed Space, description of any temporary facilities that may be necessary to meet the requirements of this Agreement, materials to be used for the Improvements, its other submission requirements as set forth in the RCPM (including, but not limited to, a description of types and appearance of food service equipment, list of utility supply methods, proposed conceptual customer seating, and potential MBE/WBE participating subcontractors), and such other things as the Commissioner reasonably requests. The Development Plan must include the anticipated Date of Beneficial Occupancy of each Concession Space, the budgeted Improvement Costs for each Concession Space, and the Delivery Date necessary in order to achieve the anticipated DBO for each Concession Space.

D. 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 RCPM ("**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 RCPM.

(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 RCPM 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 infrastucture 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.

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 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 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 one hundred and eighty (180) 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 two (2)% over the previous License Year. The License Fee, incorporating the annual increase described in this Section, is set forth in Exhibit 2.

(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 set forth in Exhibit 2.

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 Effective Date 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 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 Riverwalks pursuant to an Agreement dated _____, _____. Our examination was made in accordance with generally accepted accounting principles and, accordingly, includes such tests of the accounting records and such other procedures as we considered necessary in the circumstances.
>
> In our opinion, the accompanying statement showing Gross Revenues of $_____ presents accurately the amount of Gross Revenues, as defined in the Agreement, for the year ended _____."

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

7.5 Books, Records and Audits.

A. Except as provided below, Licensee must prepare and maintain at its office in Chicago full, complete and proper books, records and accounts in accordance with generally accepted accounting procedures relating to and setting forth the Gross Revenues, including but not limited to Gross Revenues generated by sales of Products for cash, debit, check, gift certificate, credit, or any other form of compensation, and must require and cause its operations personnel 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 if

(ii) 5% or more, an Event of Default is considered to have occurred, and in addition to all other remedies available under this Agreement, at law, or in equity, the Commissioner has the right to terminate this Agreement immediately upon giving notice to Licensee, without any opportunity for Licensee to cure.

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

7.6 Revenue Control.

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

7.7 Lien.

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

ARTICLE 8 INSURANCE, INDEMNITY AND SECURITY

8.1 Insurance.

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

8.2 Indemnification.

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

"Losses" means, individually and collectively, liabilities of every kind, including monetary damages and reasonable costs, payments and expenses (such as, but not limited to, court costs and reasonable attorneys' fees and disbursements), claims, demands, actions, suits, proceedings, fines, judgments or settlements, any or all of which in any way arise out of or relate to the negligent or otherwise wrongful errors, acts, or omissions of Licensee, its employees, agents and subcontractors.

The Licensee will promptly provide, or cause to be provided, to the Commissioner and the Corporation Counsel copies of such notices as Licensee may receive of any claims, actions, or suits as may be given or filed in connection with the Licensee's performance or the

performance of any Subcontractor and for which the Indemnified Parties are entitled to indemnification hereunder.

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

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

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

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

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

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

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

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

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

(i) becomes insolvent, as the term is defined under Section 101 of the Bankruptcy Code as amended from time to time; or

(ii) fails to pay its debts generally as they mature; or

(iii) seeks the benefit of any present or future federal, state or foreign insolvency statute; or

(iv) makes a general assignment for the benefit of creditors, or

(v) files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement of its indebtedness under the Bankruptcy Code or under any other law or statute of the United States or of any State or any foreign jurisdiction; or

(vi) consents to the appointment of a receiver, trustee, custodian, liquidator or other similar official, of all or substantially all of its property.

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

K. Licensee is dissolved.

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

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

9.2 Remedies.

If an Event of Default occurs and is not cured by Licensee in the time allowed, in addition to any other remedies provided for in this Agreement or at law or equity, the City

through the Commissioner or other appropriate City official may exercise any or all of the following remedies:

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

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

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

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

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

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

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

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

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

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

9.3 Effect of Default and Remedies

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

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

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

ARTICLE 10 SPECIAL CONDITIONS

10.1 Warranties and Representations.

In connection with the execution of this Agreement, Licensee warrants and represents statements (A) through (J) below are true as of the Effective Date. If during the Term there is any change in circumstances that would cause a statement to be untrue, Licensee must promptly notify the Commissioner in writing. Failure to do so will constitute an Event of Default. Licensee must incorporate all of the provisions set forth in this Section 10.1 in all Subcontracts entered into with any suppliers of materials, furnishers of services, Subcontractors, and labor organizations that furnish skilled, unskilled and craft union skilled labor, or that may provide any materials, labor or services in connection with this Agreement, such that the parties warrant, represent and covenant to Licensee as to the matters set forth in this Section. Licensee must cause its Subcontractors to execute those affidavits and certificates that may be necessary in furtherance of these provisions. The certifications must be attached and incorporated by reference in the applicable agreements. If any Subcontractor is a partnership or joint venture, Licensee must also include provisions in its Subcontract insuring that the entities comprising the partnership or joint venture are jointly and severally liable for its obligations under it.

A. Licensee is financially solvent; Licensee holds itself to very high standards of quality and professionalism; Licensee and each of its employees and agents are competent to

perform as required under this Agreement; this Agreement is feasible of performance by Licensee in accordance with all of its provisions and requirements; Licensee has the full power and is legally authorized to perform or cause to be performed its obligations under this Agreement under the terms and conditions stated in this Agreement; and Licensee can and will perform, or cause to be performed, all of its obligations under this Agreement in accordance with the provisions and requirements of this Agreement.

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

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

(i) conflict with or result in a breach, default or violations of: Licensee's organizational documents; any law, regulation, ordinance, court order, injunction, or decree of any court, administrative agency or governmental body, or any License or permit; or any of the terms, conditions or provisions of any restriction or any agreement or other instrument to which Licensee is now a party or by which it is bound; or

(ii) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of Licensee under the terms of any instrument or agreement.

D. There is no litigation, claim, investigation, challenge or other proceeding now pending or, to Licensee's knowledge after due and complete investigation, threatened, challenging the existence or powers of Licensee, or in any way affecting its ability to execute or perform under this Agreement or in any way having a material adverse affect 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 of Chicago, Licensee warrants and represents that it, and to the best of its knowledge, its Subcontractors have not violated and are not in violation of the following sections of the Municipal Code (collectively, the "Waste Sections"):

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

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

11-4-1410 Disposal in waters prohibited;

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

11-4-1450 Gas manufacturing residue;

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

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

11-4-1550 Operational requirements;

11-4-1560 Screening requirements; and

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

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

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

F. Prohibition on Certain Contributions

No Contractor or any person or entity who directly or indirectly has an ownership or beneficial interest in Contractor of more than 7.5% ("Owners"), spouses and domestic partners of such Owners, Contractor's Subcontractors, any person or entity who directly or indirectly has an

ownership or beneficial interest in any Subcontractor of more than 7.5% ("Sub-owners") and spouses and domestic partners of such Sub-owners (Contractor and all the other preceding classes of persons and entities are together, the "Identified Parties"), shall make a contribution of any amount to the Mayor of the City of Chicago (the "Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Contract or Other Contract, including while this Contract or Other Contract is executory, (ii) the term of this Contract or any Other Contract between City and Licensee, and/or (iii) any period in which an extension of this Contract or Other Contract with the City is being sought or negotiated.

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

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

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

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

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

For purposes of this provision:

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

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

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

G. Licensee covenants that no payment, gratuity or offer of employment must be made in connection with this Agreement by or on behalf of any Subcontractors or higher tier Subcontractors or anyone associated with them as an inducement for the award of a Subcontract or order; and Licensee further acknowledges that any agreement entered into, negotiated or

performed in violation of any of the provisions of Chapter 2-156 of the Municipal Code is voidable as to the City.

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

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

I. Visual Rights Act.

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

(ii) The Licensee represents and warrants that it will obtain a waiver of Section 106A and Section 113 of the Copyright Act as necessary from any employees and subcontractors, or any other artists. Licensee must provide City with copies of any such waivers required by Section 106A and Section 113 of the Copyright Act prior to installation of any Artwork in the Licensed Space.

10.7 Non-Discrimination.

A. Licensee for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration of this Agreement, covenants that:(i) no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in the use of the Licensed Space; (ii) in the construction of any Improvements within the Licensed Space and the furnishing of services in them, no person on the grounds of race, color, or national origin will be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination; (iii) Licensee will use the

Licensed Space in compliance with all other requirements imposed by or under 49 C.F.R. Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as those regulations may be amended; and (iv) Licensee shall operate the Concession on a fair, equal, and not illegally discriminatory basis to all users of it, and shall charge fair, reasonable, and nondiscriminatory prices for Products (but Licensee is allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers.) In addition, Licensee assures that it will comply with all other pertinent statutes, Executive Orders and the rules as are promulgated to assure that no person will, on the grounds of race, creed, color, national origin, sex, age, or handicap be excluded from participating in any activity conducted with or benefitting from federal assistance.

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

C. Licensee must comply with the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq. (1981), as amended, and to the extent required by the law, must undertake, implement and operate an affirmative action program in compliance with the rules and regulations of the Federal Equal Employment Opportunity Commission and the Office of Federal Contract Compliance, including 14 CFR Part 152, Subpart E. Attention is called to: Exec. Order No. 11,246, 30 Fed. Reg. 12,319 (1965), reprinted in 42 U.S.C. § 2000e note, as amended by Exec. Order No. 11,375, 32 Fed. Reg. 14,303 (1967) and by Exec. Order No. 12,086, 43 Fed. Reg. 46,501 (1978); Age Discrimination Act, 42 U.S.C. §§ 6101-06 (1981); Rehabilitation Act of 1973, 29 U.S.C. §§ 793-94 (1981); Americans with Disabilities Act, 42 U.S.C. § 12101 and 41 CFR Part 60 et seq. (1990) and 49 CFR Part 21, as amended (the "ADA"); and all other applicable federal statutes, regulations and other laws.

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

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

F. Licensee must insert these non-discrimination provisions in any agreement by which Licensee grants a right to any person, firm, or corporation to render accommodations

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

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

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

10.8 National Emergency.

This Agreement and all the provisions of this Agreement are subject to whatever right the United States Government now has or in the future may have or acquire affecting the control, operation, regulation, and taking over of the 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. Company is aware that City policy prohibits City employees from directing any individual to apply for a position with Company, either as an employee or as a subcontractor, and from directing Company to hire an individual as an employee or as a subcontractor. Accordingly, Company must follow its own hiring and contracting procedures, without being influenced by City employees. Any and all personnel provided by Company under this Contract are employees or subcontractors of Company, not employees of the City of Chicago. This Contract is not intended to and does not constitute, create, give rise to, or otherwise recognize an employer-employee relationship of any kind between the City and any personnel provided by Company.

C. Company will not condition, base, or knowingly prejudice or affect any term or aspect of the employment of any personnel provided under this Contract, or offer employment to any individual to provide services under this Contract, based upon or because of any political

reason or factor, including, without limitation, any individual's political affiliation, membership in a political organization or party, political support or activity, political financial contributions, promises of such political support, activity or financial contributions, or such individual's political sponsorship or recommendation. For purposes of this Contract, a political organization or party is an identifiable group or entity that has as its primary purpose the support of or opposition to candidates for elected public office. Individual political activities are the activities of individual persons in support of or in opposition to political organizations or parties or candidates for elected public office.

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

10.10 Multi-Project Labor Agreement.

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

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

10.11 Minimum Wage.

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

As of July 1, 2017 the Minimum Wage for all employees to be paid pursuant to Executive Order 2014-1 is $13.45 per hour. This requirement applies to any employee working at the Airport. When the employer takes an allowance for gratuities pursuant to 820 ILCS 105/3(c), the employer shall base the calculation of the amount to be paid by the employer to the employee on the minimum wage as set forth in 820 ILCS 105/3, and add $1.00 per hour to that amount. As of July 1, 2017, the amount to be paid when taking an allowance for gratuities, is $6.10 per hour. On or before June 1 of each year, the City will make available to the Licensee a bulletin announcing the adjusted minimum hourly wages for the upcoming year.

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

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

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

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

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 by 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. Notwithstanding the foregoing, any amendment that would modify the Agreement such that the Agreement would no longer substantially conform with the form of Agreement that was approved by City Council requires approval by the City Council.

11.4 Severability.

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

11.5 Covenants in Subcontracts.

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

11.6 Governing Law.

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

11.7 Notices.

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

Commissioner, Department of Fleet and Facility Management
City of Chicago
30 N. LaSalle Street Suite 300
Chicago, Illinois 60605

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
30 North LaSalle Street, Suite 1400
Chicago, Illinois 60602
Attn: Deputy Corporation Counsel

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

11.8 Successors and Assigns; No Third Party Beneficiaries.

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

11.9 Subordination.

A. The Licensee acknowledges and agrees that this License Agreement is subject to and subordinate to any existing or future agreement(s) of any kind between the City and any other person or party pertaining to the use, development, construction, operation and/or maintenance of the 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 paragraphs A. and B. above, those provisions in this Agreement so conflicting must be performed as required by those agreements referred to in paragraphs 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

SIGNED:

CITY OF CHICAGO

By: _____
Commissioner of the Department of Fleet and Facility Management

Date: _____

(LICENSEE)

By: _____

Its: _____
[Title]

Date: _____

[Notary]

EXHIBIT 1 - LICENSED SPACE

The Licensed Space is located at 233 E. Riverwalk and consists of 1 location(s) with a total of approximately 18,245 square feet of Concession Space and approximately 1000 square feet of Storage Space as further depicted in the License outline drawings attached hereto.

EXHIBIT 2 – TERM SHEET
TERM SHEET FOR CONCESSION LICENSE AGREEMENT ("AGREEMENT")
between
THE CITY OF CHICAGO ("CITY")
and
Spice Inc. d/b/a The Northman or The Northman on the River ("LICENSEE")
at
CHICAGO RIVERWALK

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

Key Provisions

Licensee Name: Spice Inc. d/b/a The Northman or The Northman on the River

Licensed Space Address: 233 East Riverwalk

Licensed Space Location (Description and square footage): Outdoor space at 233 East Riverwalk with 18,245 square feet of usable and landscaped area

License Term: Ten (10) years

Renewal: Two (2) successive five (5) year terms, at the City's sole discretion

Licensee's Operating Season:

Minimum season: May 26th in 2018 (Memorial Day Weekend, in following years) through September 3rd in 2018 (Labor Day, in following years);

Extended Season: May 1st until Memorial Day Weekend), and day after Labor Day through October 31st;

Other: For specific events at other points in the year (i.e., Winter Festival, Cider Summit Week, St. Patrick's Weekend), with Commissioner approval

Permitted Use: Retail food and on-premise alcohol consumption

Days and Hours of Operation:

Subject to Commissioner approval:
Minimum Season: daily 11AM-11PM
Extended Season: Mon-Thur, 12PM-9PM; Fri-Sat, 11AM-8PM; Sun, 11AM-8PM

Description of Operations: Multiple food and liquor concessions and outdoor entertainment venue in a unique Beer & Cider Garden setting, including proposed children's play area, food cart, live music, dancing, games, industry and private events, educational classes and seminars

Fees Payable to the City:

License Fee: $15,000 annually, to be paid on a schedule as set forth on the attached Schedule 1 to this Exhibit 2, with 2% annual increases

Percentage Fee: 0% of Gross Revenues for Year 1 of the Term, 3% of Gross Revenues for Years 2 through 5 of the Term, 10% of Gross Revenues for Years 6 through 10 of the Term, 11% of Gross Revenues for Years 11 through 15 of the Term, as extended, and 11.5% of Gross Revenues for Years 16 through 20 of the Term, as extended.

See below for additional detail on projected Gross Revenues and Fees.

Total Fees based upon revenue projections (see below) estimated to be: 10-year term total fees of approximately $1.84 million (USD).

Ten Year Term	License Fee	% Rate for Percentage Fee	Estimated Gross Revenues	Estimated Percentage Fee[1]	Estimated Total Fee	Calendar Year
Year One:	$15,000	0	$500,000	$0	$15,000	2018
Year Two:	$15,300	3	$2,200,000	$66,000	$81,300	2019
Year Three:	$15,606	3	$2,310,000	$69,300	$84,906	2020
Year Four:	$15,918	3	$2,425,500	$72,765	$88,683	2021
Year Five:	$16,236	3	$2,546,775	$76,403	$92,640	2022
Year Six:	$16,561	10	$2,623,178	$262,318	$278,879	2023
Year Seven:	$16,892	10	$2,701,874	$270,187	$287,080	2024
Year Eight:	$17,230	10	$2,782,930	$278,293	$295,523	2025
Year Nine:	$17,575	10	$2,866,418	$286,642	$304,217	2026
Year Ten:	$17,926	10	$2,952,410	$295,241	$313,167	2027

Extension 1	License Fee	% Rate for Percentage Fee	Estimated Gross Revenues	Estimated Percentage Fee[1]	Estimated Total Fee	Calendar Year
Year One	$ 18,285	11	$2,409,167	$331,260	$349,545	2028
Year Two	$ 18,651	11	$2,457,350	$337,886	$356,536	2029
Year Three	$ 19,024	11	$2,506,497	$344,643	$363,667	2030
Year Four	$ 19,404	11	$2,556,627	$351,536	$370,940	2031
Year Five	$ 19,792	11	$2,607,760	$358,567	$378,359	2032

Extension 2	License Fee	% Rate for Percentage Fee	Estimated Gross Revenues	Estimated Percentage Fee[1]	Estimated Total Fee	Calendar Year
Year One	$ 20,188	11.5	$2,659,915	$382,363	$402,551	2033
Year Two	$ 20,592	11.5	$2,713,113	$390,010	$410,602	2034
Year Three	$ 21,004	11.5	$2,767,375	$397,810	$418,814	2035
Year Four	$ 21,424	11.5	$2,822,723	$405,766	$427,190	2036
Year Five	$ 21,852	11.5	$2,879,177	$413,882	$435,734	2037

1[1] The actual Percentage Fee will be based on actual Gross Revenues.

Utilities: Licensee is responsible for all utilities, including utility connections

Security: Licensee is responsible for security within Licensed Space as needed and requested by City

Delivery Location and Hours: Loading zone needed, to be provided by the Commissioner

Reporting: Monthly report to be provided to the City and other reports as requested by City or as otherwise required under the Agreement

Improvement Description:

1) Construction of free standing structure to house full kitchen, walk-in coolers for both food and beverage, draft lines, service bars and counters, work areas and storage

2) Rehabilitation of existing structure including new roof, siding and interior remodel in accordance with City of Chicago Health and Building Codes

3) Hardscaping including a new "natural" children's play areas, decking, pergolas, and other structures needed to support customer seating areas; path improvement

4) Visual improvements including proposed green screens and art designed to minimize the impact of Wacker Drive; proposed mural to cover wall on Columbus bridge pending CDOT approval

5) Remodel interior/exterior of existing bathrooms and bring facilities into code compliance

6) Buildout of additional toilet facilities pending feasibility assessment; may be tabled to 2019; installation of temporary "executive" toilets with privacy screen to increase service in 2018

7) Deliver or increase capacity for water, sewer, electric, voice and data

Improvement Costs: Estimated at $600,000

Improvement Costs per square foot: Hardscaping: $15/sf; New Construction: $250/sf; Existing Structures Rehab: $100/sf

Special Provisions:

1) Allowance for off-premise alcohol sales of proprietary labeled products, with Commissioner approval and Chicago Riverwalk Liquor License Ordinance revision and City Council approval

2) The City will provide two parking spaces to Licensee under the Michigan Avenue ramp, or in such locations as determined by the City, and as subject to approval by the Commissioner

3) The City will provide a loading zone area on Lower Wacker Drive to Licensee for purposes of food and beverage items and programming, in such locations as determined by the City, and as subject to approval by the Commissioner

4) Thorium Monitoring and, if necessary, removal to be performed by the City of Chicago

The City shall provide monitoring of thorium during the excavation of the Esplanade District in accordance with EPA requirements. If the City discovers thorium in the course of its monitoring, City will perform any required special handling of thorium at its own cost.

Costs associated with containment or removal of all other Hazardous Substances or Other Regulated Materials (collectively "HSORM") discovered during the Licensee's excavation of the Licensed Spaces ("HSORM Costs"), shall be borne by the Licensee; however, HSORM Costs shall be included in the Licensee's Improvement Costs. Such Improvement Costs will be subject to the Commissioner approval process in Section 5.3.D of the Agreement. Licensee shall immediately notify the Commissioner if Licensee encounters an HSORM in the course of Licensee's excavation of th Licensed Space. Upon such notification, the City will determine the work requirements applicable to the specific HSORM and notify Licensee of these requirements in the form of a task order, and all HSORM services shall be performed by Licensee in accordance with the task order. Such requirements may be attached to this Exhibit 2 without need for a formal amendment of this Agreement.

5) Programming including live music, dancing and other recreational activities to be provided in an annual schedule for Commissioner approval. Additional Programming: Northman on the River intends to provide programming within the location which includes cider lectures and discussions, special events and other ideas as approved by the Commissioner. An annual programming calendar will be provided for Commissioner Approval no later than April 1. Special use or corresponding permit for use of site for St. Patrick's weekend 2018.

Schedule 1 to Exhibit 2
License Fee Payment Schedule

Vendor Name:		Northman on the River			
Date of Beneficial Occupancy:		Q3 2018			
10 Year Term	Quarter 1	Quarter 2	Quarter 3	Quarter 4	Total License Fee
2018			$ 7,500	$ 7,500	$ 15,000
2019	$ 3,825	$ 3,825	$ 3,825	$ 3,825	$ 15,300
2020	$ 3,902	$ 3,902	$ 3,902	$ 3,902	$ 15,606
2021	$ 3,980	$ 3,980	$ 3,980	$ 3,980	$ 15,918
2022	$ 4,059	$ 4,059	$ 4,059	$ 4,059	$ 16,236
2023	$ 4,140	$ 4,140	$ 4,140	$ 4,140	$ 16,561
2024	$ 4,223	$ 4,223	$ 4,223	$ 4,223	$ 16,892
2025	$ 4,308	$ 4,308	$ 4,308	$ 4,308	$ 17,230
2026	$ 4,394	$ 4,394	$ 4,394	$ 4,394	$ 17,575
2027	$ 4,482	$ 4,482	$ 4,482	$ 4,482	$ 17,926
Extention 1					
2028	$ 4,571	$ 4,571	$ 4,571	$ 4,571	$ 18,285
2029	$ 4,663	$ 4,663	$ 4,663	$ 4,663	$ 18,651
2030	$ 4,756	$ 4,756	$ 4,756	$ 4,756	$ 19,024
2031	$ 4,851	$ 4,851	$ 4,851	$ 4,851	$ 19,404
2032	$ 4,948	$ 4,948	$ 4,948	$ 4,948	$ 19,792
Extension 2					
2033	$ 5,047	$ 5,047	$ 5,047	$ 5,047	$ 20,188
2034	$ 5,148	$ 5,148	$ 5,148	$ 5,148	$ 20,592
2035	$ 5,251	$ 5,251	$ 5,251	$ 5,251	$ 21,004
2036	$ 5,356	$ 5,356	$ 5,356	$ 5,356	$ 21,424
2037	$ 5,463	$ 5,463	$ 5,463	$ 5,463	$ 21,852

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

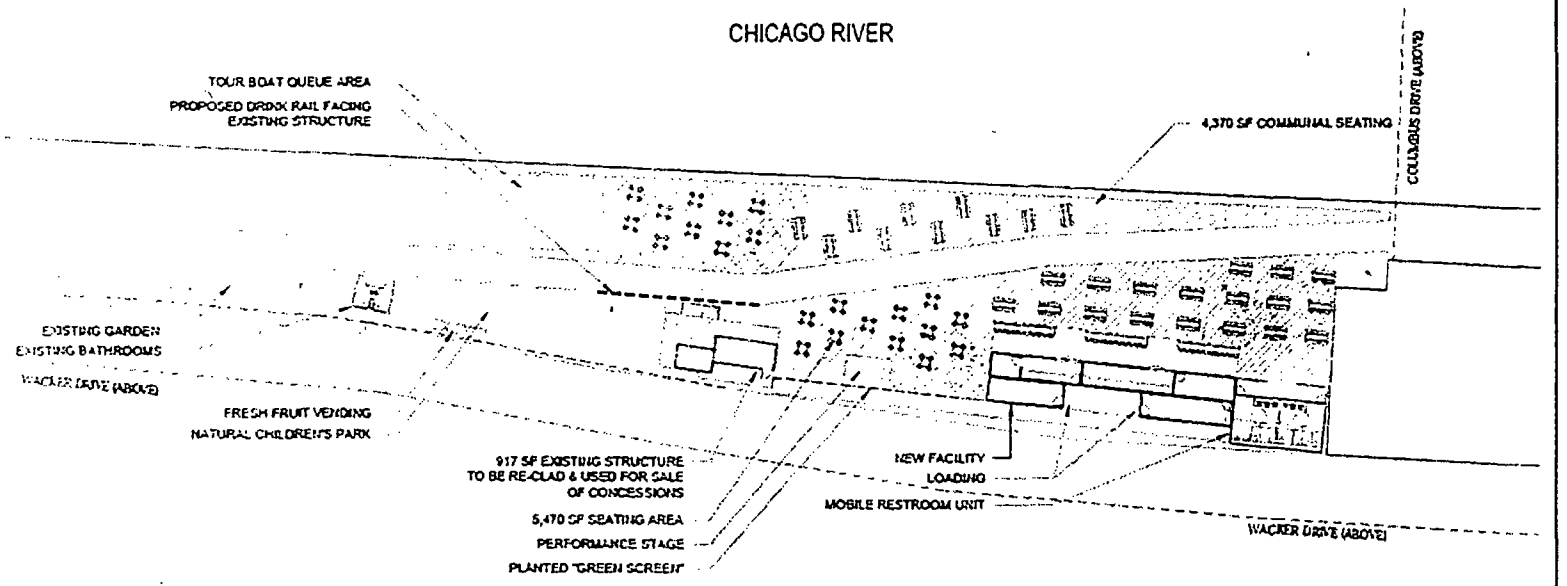
1) Proposed Schedule

Date	Action	Comment
March 2018	Pop Up St. Patrick's	Pending Approval
February 2018	Submit 30% Design	Ready earlier/Pending Council Passage
March 2018	Submit 60% Design	
April 2018	Submit 100% Design/Submit for permitting	
June 2018	Open as limited Concession	Pending approval
June 2018	Begin Construction	Pending permitting
August/September 2018	Open as Full Concession	Pending permitting

2) Proposed DBO: September 2018 pending permitting

3) Square Footage per Structure:

A. Area of proposed new restroom facilities: 468sf
B. Existing restrooms: 100sf
C. Remaining area of new facility excluding restrooms: 1,212sf
D. Existing concession structure: 277sf



1 SITE PLAN - OPTION 4
1/32" = 1'-0"

MULLER+MULLER

N

PROJECT
NORTHMAN ON THE RIVER

SHEET TITLE
SITE PLAN

DESIGNED
DRAWN
APPROVED
DATE
SK-010

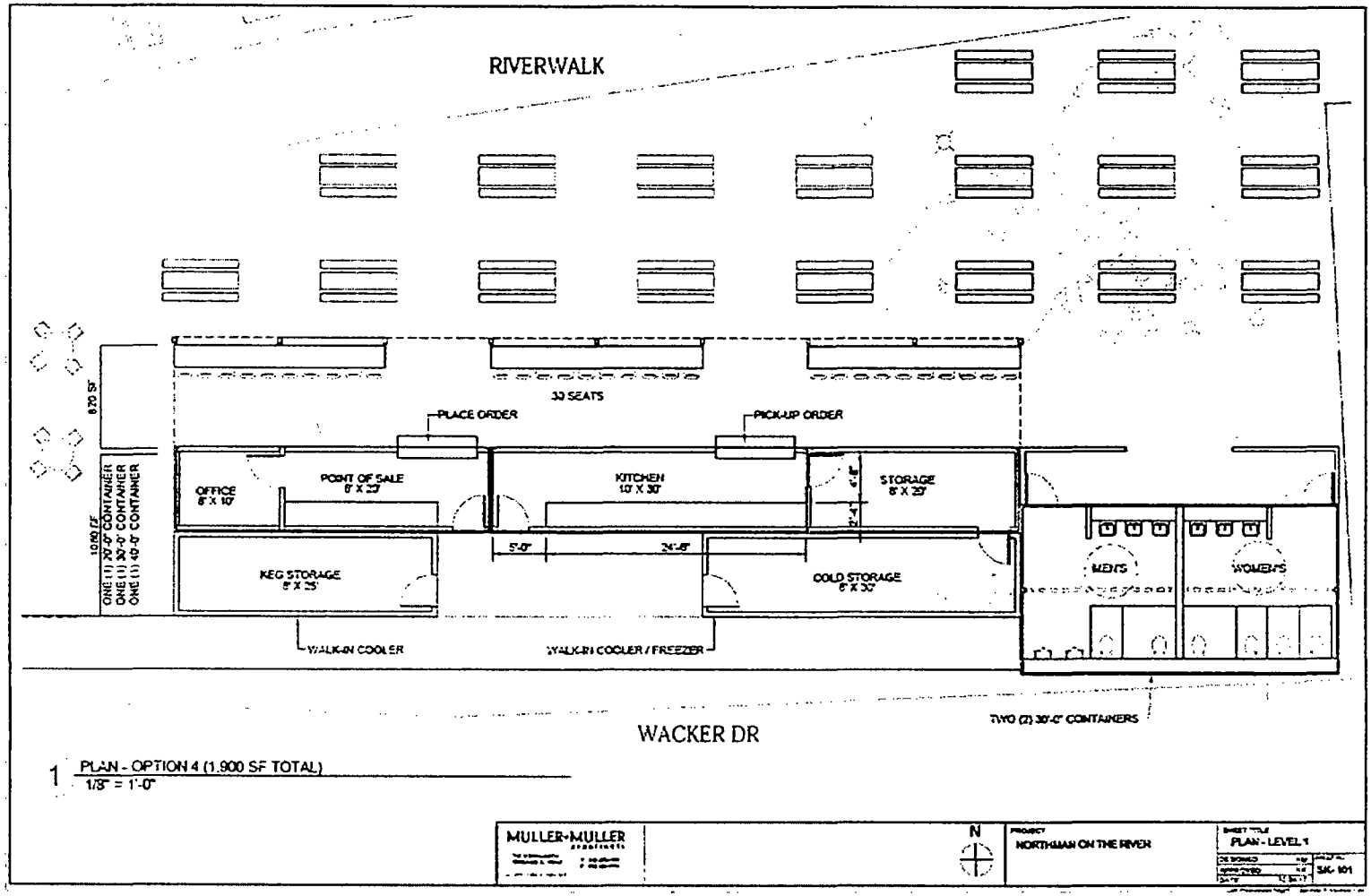

RIVERWALK
33 SEATS
PLACE ORDER
PICK-UP ORDER
OFFICE
8' X 10'
POINT OF SALE
8' X 25'
KITCHEN
10' X 30'
STORAGE
8' X 25'
KEG STORAGE
8' X 25'
COLD STORAGE
8' X 30'
5'-0"
24'-8"
MEN'S
WOMEN'S
WALK-IN COOLER
WALK-IN COOLER / FREEZER
TWO (2) 30'-0" CONTAINERS
WACKER DR
820 SF
1020 SF
ONE (1) 20'-0" CONTAINER
ONE (1) 30'-0" CONTAINER
ONE (1) 40'-0" CONTAINER
1 PLAN - OPTION 4 (1,900 SF TOTAL)
1/8" = 1'-0"
MULLER+MULLER
N
NORTHMAN ON THE RIVER
PLAN - LEVEL 1
SAK-101

EXHIBIT 4 - PRODUCTS AND PRICE LIST- MENU

Alcholic Beverages

must be at least 21years old, with ID to purchase

Draught

Northman Pub Cider - 9
Semi-dry - MI - 6.5%ABV

Farmum Hill, Dooryard #1701 - 10
Dry - Lebanon, NH - 7.4%ABV

Right Bee Cider, Original Unfiltered - 8
Semi-dry - Chicago, IL - 5.7%ABV

Seattle, Gravenstein Rosé - 8
Semi-dry - WA - 6.9%ABV

Virtue, Percheron - 8
Dry - Fennville, MI - 5.5%ABV

Etienne Dupont, Brut - 10
Semi-dry - Normandy - 5.5%ABV

Dovetail, Hefeweizen - 8
Chicago - 4.8%ABV

Begyle, Neighborly Stout Nitro - 7
Irish Dry Stout - Chicago - 6%ABV

Half Acre, Beer Hates Astronauts - 7
American IPA - Chicago - 7% ABV

Cans

Blake's El Chavo - 6
Blake's Wakefire - 6
Pacific Coast Strawberry - 8
Pacific Coast Mango Muscat - 8
Uncle John's Apple - 7
Uncle John's Blueberry - 7
Vander Mill Ginger Peach - 7
Virtue Michigan Brut -6

Half Acre Pony Pils - 7
Begyle Free Bird - 6
Solemn Oath Snaggletooth Bandana - 6
Stiegle Pils - 7
Stiegl Radler - 6

Wine by the Glass

Lambert, Les Terrasses, Chinon, Loire - 10
Cabernet Franc
Wild musky nose. Dense black fruits and hints of wild flowers. Supple tannins.

Château La Tonnelle, Bordeaux Supérieur - 11
Cabernet Sauvignon, Merlot, Petit Verdot
Black & red fruits. Smoke notes from oak aging, rich, deep

Domaine Emile Beyer, Pinot Gris Tradition Alsace - $12
Aromatic, hints of honeysuckle, lemon curd and stone

Château La Freynelle, Bordeaux Blanc - 8
Sauvignon Blanc, Semillon, Muscadelle
Lemon zest and fresh cut grass, wet river stones, grapefruit

Non-Alcoholic Beverages

House Made Drinks - 7

Apple Cider Soda
Seedling fresh sweet cider, soda water, ice

Seasonal Fruit Soda
fresh fruit syrup, soda water, ice

House-Made Lemonade

Water - 5

Bottled Water
La Croix

Juice - 3

Cranberry
Orange
Apple

Soda - 4

Coke
Diet Coke
Sprite
Diet Sprite
Jones Pure Cane
Sugar Ginger Ale
Jones Black Cherry
San Pellegrino
Orange

Coffee - 5

Hot Coffee
Cold Brew

Tea -5

Hot Tea
Honest
Bai

Fruit Smoothies - 8

Strawberry
Lemonade

Snacks - 3

Kettle Chips
Jalepeno, Sea Salt & Vinegar

Deep River Chips
Spicy Dill, Sweet Maui Onion

Paqui
Haunted Ghost Pepper, Very Verde Good

Veggie Straw
Light salt

Light POP
Original

Kind Bars
Fruit & Nut Delight, Almond Walnut

Great Skott
Party Mix

Ice Cream - 5

Organic Ice Cream Bars
Chocolate Peppermint, Strawberry Lemonade, Mango

Dove Bars
Mild Chocolate Almond, Dark Chocolate

Italian Ice
Lemon, Strawberry, Watermelon

Soup, Salad & Smalls

French Onion Soup - 11
beef stock, red wine, gruyere, toasted baguette

Pub Salad - 12
mixed greens, bacon, Chef's choice of cheese, sous vide egg, pickled beets, cucumber, celery, sherry vinaigrette

Baby Arugula & Kale- 10
cidra golden raisins, candied walnuts, pickled red onion, smoked cheddar, croutons, apple Dijon vinaigrette

Ploughman's Platter – 13 / 23
selection of 2 meats and a cheese, pickles, baguette, pickled egg, applestard

Oysters on the Half Shell– 10 / 18
3 or 6 market oysters, cider & shallot mignonette

Chicken Liver Pate – 11
10 year Pommeau, pickles, baguette, mustard

The Chips - 6
black garlic aioli, curried ketchup

Rosemary Crunchy Nuts – 7
candied peanuts, cashews, walnuts, almonds

House Olives – 5
green & red Cerignola, French Nicoise, Kalamata

Larger

Fish & Chips - 18
malt cured Icelandic cod, cider batter, spicy gribiche, malt mist

Döner Kabob - 12
roasted beef, chicken, and lamb spit, marinated tomato, cucumber, lemon, crispy rice, yogurt, flatbread, chips (served spicy or regular)

House Falafel Wrap – 9
marinated tomato, cucumber, lemon, crispy rice, yogurt, flatbread, chips (served spicy or regular)

White Bean Cassoulet - 14
slow cooked white beans, winter vegetable gravy, mushroom ragout, haricot vert & wilted arugula, cashew & cheese crumble

The Melt - 13
griddled Painted Hills patty, dark onions, garlic aioli, butterkase, bread & butter pickles, sesame potato bun, chips, curried ketchup

Cheese

1.5oz portions served with apple butter and baguette or sliced apple

Livarot AOC - Normandy, France - 8
washed rind, slightly firm texture, nutty finish, cow's milk

Camembert au Calvados - Normandy, France – 5.5
Calvados washed rind, full & pungent flavor, cow's milk

Barber's 1833 Reserve Cheddar - Somerset, UK – 3.5
sharp, mature, with an exceptional depth of flavor - cow's milk - pasteurized

Red Barn Cupola - LaClare Farms, WI - 5
firm textured, tangy, handmade in small batches by U.S. Champion cheesemaker Katie Fuhrmann - cow's milk

Truffle Noir Gouda - Holland - 7
young, creamy, with Italian summer black truffles. The embodiment of earthiness - cow's milk - pasteurized

Capra Goat with Honey – Belgium - 3.5
creamy, tangy, with added Belgian honey - goat's milk - pasteurized

Final

Cider Glazed Donuts – 5 / 9
brown butter ice cream, pecan crumble

Apple Strudel - 9
Sweet apple compotn, spiced nut crumble, citrus cinnamon ice cream

Ice Cream Flight – 8
Brown butter ice cream, pumpkin ice cream, citrus cinnamon ice cream, rosemary mixed nuts (single scoop available - 3)

Much of our menu is or can be made gluten free.

Please notify your server or tender of any allergies or dietary restrictions.

EXHIBIT 5 - FORM OF LETTER OF CREDIT

1) Line of Credit will be provided upon contract execution

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 Fleet and Facility Management

Chicago Riverwalk

Chicago, Illinois 60666

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 Fleet and Facility Management , or hisdesignee.
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 Corporate 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 Fleet and Facility Management, 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 License and 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 Fleet and Facility Management

EXHIBIT 6 - INSURANCE REQUIREMENTS AND INSURANCE CERTIFICATE

1) Licensee will provide all necessary insurance coverage as required by the City of Chicago set forth in the license agreement

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 01/10/2018

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER

Frimark Keller and Associates, LLC
1920 N Thoreau Drive, Suite 114
Schaumburg, IL 60173

CONTACT NAME: Vicki Colletti
PHONE (A/C, No, Ext): (847)907-4520 FAX (A/C, No): (847)637-1931
E-MAIL ADDRESS: vicki@frimarkkeller.com

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A	EMC Insurance Companies	21407
INSURER B	EMC Insurance Companies	32808
INSURER C	Lloyds & American Empire	
INSURER D		
INSURER E		
INSURER F		

INSURED

Spice, Inc.
DBA The Northman
4337 N Lincoln Ave
Chicago, IL 60618-1741

COVERAGES CERTIFICATE NUMBER: 00000000-414293 REVISION NUMBER: 16

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY			5A42470	01/29/2017	01/29/2018	EACH OCCURRENCE	$ 1,000,000
	CLAIMS-MADE X OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$ 100,000
							MED EXP (Any one person)	$ 5,000
							PERSONAL & ADV INJURY	$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER						GENERAL AGGREGATE	$ 2,000,000
	X POLICY PRO-JECT LOC						PRODUCTS - COMP/OP AGG	$ 2,000,000
	OTHER							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY / SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
B	X UMBRELLA LIAB OCCUR			5J42470	01/29/2017	01/29/2018	EACH OCCURRENCE	$ 1,000,000
	EXCESS LIAB X CLAIMS-MADE						AGGREGATE	$ 1,000,000
	DED X RETENTION $ 10,000							$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			5H42470	01/29/2017	01/29/2018	X PER STATUTE / OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N [ ] N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT	$ 1,000,000
							E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
							E.L. DISEASE - POLICY LIMIT	$ 1,000,000
C	Liquor Liability			LIQ224508	09/27/2016	09/27/2018	Dram Shop	1,000,000
A	Business Pers Prop			5A42470	01/29/2017	01/29/2018	Contents	$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Re: The Riverwalk
City of Chicago, its agents and employees are listed as additional insured in regards to the riverwalk project.

CERTIFICATE HOLDER

City of Chicago
Dept of Fleet and Facility Management
30 N LaSalle St., Ste 300
Chicago, IL 60602

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Howard P. Frimark (VRC)

© 1988-2015 ACORD CORPORATION All rights reserved

The Contractor must provide and maintain for the life of this Contract and at Contractor's own expense, until Contract completion and during the time period following final completion if Contractor is required to return and perform any additional work, the insurance coverage and requirements specified below, insuring all operations related to the Contract.

See specific insurance requirements for the concession being proposed.

All Risk Property

The Contractor must maintain All Risk Commercial Property Insurance covering loss or damage at full replacement cost to any City of Chicago equipment, materials, parts, or supplies while in the care, custody, and control of the Contractor as part of the Contract. The Contractor is responsible for any damage to City property at replacement cost that results from this Contract.

Additional Requirements

The Contractor must furnish the City of Chicago, Department of Procurement Services, City Hall, Room 806, 121 North LaSalle Street, Chicago, Illinois 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Contract, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Contract. The Contractor must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached as an exhibit) or equivalent prior to Contract award. 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 Contract requirements. The failure of the City to obtain certificates or other insurance evidence from Contractor is not a waiver by the City of any requirements for the Contractor to obtain and maintain the specified coverages. The Contractor must advise all insurers of the Contract provisions regarding insurance. Non-conforming insurance does not relieve Contractor of the obligation to provide insurance as specified herein. No fulfillment of the insurance conditions may constitute a violation of the Contract, and the City retains the right to stop work until proper evidence of insurance is provided, or the Contract may be terminated.

Contractor must furnish Certificates Insurance of Coverage of any or all insurance policies listing the City as an additional insured upon request by the Chief Procurement Officer. All Certificates Insurance of Coverage must be signed, dated and reference the City contract number.

The insurance 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.

Any deductibles or self-insured retentions on referenced insurance coverages must be borne by Contractor.

The Contractor agrees that insurers waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

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

Any insurance or self-insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Contractor under the Contract.

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.

If Contractor is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company and each of its separate constituent entities as named insureds.

The Contractor must require all subcontractors to provide the insurance required herein, or Contractor may provide the coverages for subcontractors. All subcontractors are subject to the same insurance requirements of Contractor unless otherwise specified in this Contract.

If Contractor or subcontractor desire additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

Notwithstanding any provision in the Contract to the contrary, the City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

INSURANCE REQUIREMENTS

Department of Fleet and Facility Management

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.

CONTRACT INSURANCE REQUIREMENTS
Department of Fleet and Facility Management

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 Contactor 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.

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

1) Licensee will in good faith make all efforts to attain the MBE/WBE participation goals set forth in section 5.10 of the license agreement. Licensee will provide schedules C and D to demonstrate compliance.

2) Licensee has contracted Muller & Muller, a WBE certified architectural firm, to develop the site plan and assist in contracting other MBE/WBE firms

3) Licensee currently has bids scheduled for Taggart Electric, *MBE* and Vivant Gardening, *WBE.*

4) Licensee will consult DPS approved lists for any further requirements

EXHIBIT 7 - SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR MBE/WBE PROFESSIONAL SERVICES

CITY OF CHICAGO
Department of Procurement Services
Jamie L. Rhee, Chief Procurement Officer
121 North LaSalle Street, Room 806
Chicago, Illinois 60602-1284
Fax: 312-744-3281

MBE & WBE SPECIAL CONDITIONS FOR COMMODITIES OR SERVICES CONTRACTS

SPECIAL CONDITIONS REGARDING MINORITY BUSINESS ENTERPRISE COMMITMENT AND WOMEN BUSINESS ENTERPRISE COMMITMENT FOR COMMODITIES OR SERVICES

Policy and Terms

It is the policy of the City of Chicago that Local Businesses certified as Minority Owned Business Enterprises (MBE) and Women Owned Business Enterprises (WBE) in accordance with Section 2-92-420 et seq. of the Municipal Code of Chicago and Regulations Governing Certification of Minority and Women-owned Businesses and all other Regulations promulgated under the aforementioned sections of the Municipal Code, as well as MBEs and WBEs certified by Cook County, Illinois, will have full and fair opportunities to participate fully in the performance of this contract. Therefore, the Contractor will not discriminate against any person or business on the basis of race, color, sex, gender identity, age, religion, disability, national origin, ancestry, sexual orientation, marital status, parental status, military discharge status or source of income and will take affirmative action to ensure that women and minority businesses will have the maximum opportunity to compete for and perform subcontracts for supplies or services.

Pursuant to Section 2-92-430 of the Municipal Code of Chicago, the Chief Procurement Officer has established a goal of awarding not less than 25% of the annual dollar value of all non-construction contracts to certified MBEs and 5% of the annual dollar value of all non-construction contracts to certified WBEs.

Accordingly, the Contractor commits to make Good Faith Efforts to expend at least the following percentages of the total contract price (inclusive of any and all modifications and amendments), if awarded, for contract participation by MBEs and WBEs:

Design and Engineering		**Construction**	
MBE Percentage	WBE Percentage	MBE Percentage	WBE Percentage
25%	5%	30%	8%

This commitment is met by the Contractor's status as a MBE or WBE, or by a joint venture with one or more MBEs or WBEs as prime contractor (to the extent of the MBE or WBE participation in such joint venture), or by subcontracting a portion of the work to one or more MBEs or WBEs, or by the purchase of materials used in the performance of the contract from one or more MBEs or WBEs, or by the indirect participation of MBEs or WBEs in other aspects of the Contractor's business (but no dollar of such indirect MBE or WBE participation will be credited more than once against a Contractor's MBE or WBE commitment with respect to all government Contracts of such Contractor), or by any combination of the foregoing.

Note: MBE/WBE participation goals are separate and those businesses certified with the City of Chicago as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE, but not both to demonstrate compliance with the Contract Specific Goals.

As noted above, the Contractor may meet all or part of this commitment by contracting with MBEs or WBEs for the provision of goods or services not directly related to the performance of this Contract. However, in determining the manner of MBE/WBE participation, the Contractor will first consider involvement of MBEs/WBEs as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this Contract. In appropriate cases, the Chief Procurement Officer will require the Contractor to demonstrate the specific efforts undertaken by it to involve MBEs and WBEs directly in the performance of this Contract.

The Contractor also may meet all or part of this commitment through credits received pursuant to Section 2-92-530 of the Municipal Code of Chicago for the voluntary use of MBEs or WBEs in private sector contracts.

Pursuant to 2-92-535, the prime contractor may apply be awarded an additional 0.333 percent credit, up to a maximum of a total of 5 percent additional credit, for every 1 percent of the value of a contract self-performed by MBEs or WBEs, or combination thereof, that have entered into a mentor agreement with the contractor. This up to 5% may be applied to the Contract Specific Goals, or it may be in addition to the Contract Specific Goals.

Definitions

"Area of Specialty" means the description of an MBE or WBE firm's business which has been determined by the Chief Procurement Officer to be most reflective of the MBE or WBE firm's claimed specialty or expertise. Each MBE/WBE letter of certification contains a description of the firm's Area of Specialty. This information is also contained in the Directory (defined below). Credit toward this Contract's MBE and WBE participation goals shall be limited to the participation of firms performing within their Area of Specialty.

NOTICE: *The City of Chicago does not make any representation concerning the ability of any MBE/WBE to perform work within their Area of Specialty. It is the responsibility of all contractors to determine the capability and capacity of MBEs/WBEs to satisfactorily perform the work proposed.*

"B.E.P.D." means an entity certified as a Business enterprise owned or operated by people with disabilities as defined in MCC Section 2-92-586.

"Bid" means a bid, proposal, or submittal detailing a description of the services or work to be provided by the contractor in response to a bid solicitation, request for proposal, request for qualification of task order request (issued in accordance with the Master Consulting Agreement) that is issued by the City.

"Bidder" means any person or business entity that submits a bid, proposal, qualification or submittal that seeks to enter into a contract with the City, and includes all partners, affiliates and joint ventures of such person or entity.

"Broker" means a person or entity that fills orders by purchasing or receiving supplies from a third party supplier rather than out of its own existing inventory and provides no commercially useful function other than acting as a conduit between his or her supplier and his or her customer.

"Chief Procurement Officer" or "CPO" means the chief procurement officer of the City of Chicago or his or her designee.

"Commercially Useful Function" means responsibility for the execution of a distinct element of the work of the contract, which is carried out by actually performing, managing, and supervising the work involved, evidencing the responsibilities and risks of a business owner such as negotiating the terms of (sub)contracts, taking on a financial risk commensurate with the contract or its subcontract, responsibility for acquiring the appropriate lines of credit and/or loans, or fulfilling responsibilities as a joint venture partner as described in the joint venture agreement.

"Contract Specific Goals" means the subcontracting goals for MBE and WBE participation established for a particular contract.

"Contractor" means any person or business entity that has entered into a contract with the City as described herein, and includes all partners, affiliates, and joint ventures of such person or entity.

"Direct Participation" the value of payments made to MBE or WBE firms for work that is performed in their Area of Specialty directly related to the performance of the subject matter of the Contract will count as Direct Participation toward the Contract Specific Goals.

"Directory" means the Directory of Certified "Minority Business Enterprises" and "Women Business Enterprises" maintained and published by the City of Chicago. The Directory identifies firms that have been certified as MBEs and WBEs, and includes both the date of their last certification and the area of specialty in which they have been certified. Contractors are responsible for verifying the current certification status of all proposed MBE, and WBE firms.

"Good Faith Efforts" means actions undertaken by a bidder or contractor to achieve a Contract Specific Goal that the CPO or his or her designee has determined, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program's requirements.

"Indirect Participation" refers to the value of payments made to MBE or WBE firms for work that is done in their Area of Specialty related to other aspects of the Contractor's business. (Note: no dollar of such indirect MBE or WBE participation shall be credited more than once against a contractor's MBE or WBE commitment with respect to all government contracts held by that contractor.)

"Joint venture" means an association of a MBE or WBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which each joint venture partner contributes property, capital, efforts, skills and knowledge, and in which the MBE or WBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

"Mentor-Protégé Agreement" means an agreement between a prime and MBE or WBE subcontractor pursuant to MCC 2-92-535, that is approved by the City of Chicago and complies with all requirements of MCC 2-92-535 and any rules and regulations promulgated by the Chief Procurement Officer.

"Minority Owned Business Enterprise" or **"MBE"** means a firm awarded certification as a minority owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a minority owned and controlled business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

"Municipal Code of Chicago" or **"MCC"** means the Municipal Code of the City of Chicago.

"Supplier" or **"Distributor"** refers to a company that owns, operates, or maintains a store, warehouse or other establishment in which materials, supplies, articles or equipment are bought, kept in stock and regularly sold or leased to the public in the usual course of business. A regular distributor or supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular distributor the firm must engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular distributor in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment.

"Women Owned Business Enterprise" or **"WBE"** means a firm awarded certification as a women owned and controlled business in accordance with City Ordinances and Regulations as well as a firm awarded certification as a women owned business by Cook County, Illinois. However, it does not mean a firm that has been found ineligible or which has been decertified by the City or Cook County.

Joint Ventures

The formation of joint ventures to provide MBEs and WBEs with capacity and experience at the prime contracting level, and thereby meet Contract Specific Goals (in whole or in part) is encouraged. A joint venture may consist of any combination of MBEs, WBEs, and non-certified firms as long as one member is an MBE or WBE.

a. The joint venture may be eligible for credit towards the Contract Specific Goals only if:

   i. The MBE or WBE joint venture partner's share in the capital contribution, control, management, risks and profits of the joint venture is equal to its ownership interest;

   ii. The MBE or WBE joint venture partner is responsible for a distinct, clearly defined portion of the requirements of the contract for which it is at risk;

   iii. Each joint venture partner executes the bid to the City; and

   iv. The joint venture partners have entered into a written agreement specifying the terms and conditions of the relationship between the partners and their relationship and responsibilities to the contract, and all such terms and conditions are in accordance with the conditions set forth in Items i, ii, and iii above in this Paragraph a.

b. The Chief Procurement Officer shall evaluate the proposed joint venture agreement, the Schedule B submitted on behalf of the proposed joint venture, and all related documents to determine whether these requirements have been satisfied. The Chief Procurement Officer shall also consider the record of the joint venture partners on other City of Chicago contracts. The decision of the Chief Procurement Officer regarding the eligibility of the joint venture for credit towards meeting the Contract Specific Goals, and the portion of those goals met by the joint venture, shall be final.

   The joint venture may receive MBE or WBE credit for work performed by the MBE or WBE joint venture partner(s) equal to the value of work performed by the MBE or WBE with its own forces for a distinct, clearly defined portion of the work.

   Additionally, if employees of the joint venture entity itself (as opposed to employees of the MBE or WBE partner) perform the work, then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in Schedule B.

   The Chief Procurement Officer may also count the dollar value of work subcontracted to other MBEs and WBEs. Work performed by the forces of a non-certified joint venture partner shall not be counted toward the Contract Specific Goals.

c. **Schedule B: MBE/WBE Affidavit of Joint Venture**

   Where the bidder's Compliance Plan includes the participation of any MBE or WBE as a joint venture partner, the bidder must submit with its bid a Schedule B and the proposed joint venture agreement. These documents must both clearly evidence that the MBE or WBE joint venture partner(s) will be responsible for a clearly defined portion of the work to be performed, and that the MBE's or WBE's responsibilities and risks are proportionate to its ownership percentage. The proposed joint venture agreement must include specific details related to:

   i. The parties' contributions of capital, personnel, and equipment and share of the costs of insurance and bonding;

   ii. Work items to be performed by the MBE's or WBE's own forces and/or work to be performed by employees of the newly formed joint venture entity;

   iii. Work items to be performed under the supervision of the MBE or WBE joint venture partner; and

   iv. The MBE's or WBE's commitment of management, supervisory, and operative

personnel to the performance of the contract.

NOTE: Vague, general descriptions of the responsibilities of the MBE or WBE joint venture partner do not provide any basis for awarding credit. For example, descriptions such as "participate in the budgeting process," "assist with hiring," or "work with managers to improve customer service" do not identify distinct, clearly defined portions of the work. Roles assigned should require activities that are performed on a regular, recurring basis rather than as needed. The roles must also be pertinent to the nature of the business for which credit is being sought. For instance, if the scope of work required by the City entails the delivery of goods or services to various sites in the City, stating that the MBE or WBE joint venture partner will be responsible for the performance of all routine maintenance and all repairs required to the vehicles used to deliver such goods or services is pertinent to the nature of the business for which credit is being sought.

Counting MBE/WBE Participation Toward the Contract Specific Goals
Refer to this section when preparing the MBE/WBE compliance plan and completing Schedule D-1 for guidance on what value of the participation by MBEs and WBEs will be counted toward the stated Contract Specific Goals. The "Percent Amount of Participation" depends on whether and with whom a MBE or WBE subcontracts out any portion of its work and other factors.

Firms that are certified as both MBE and WBE may only be listed on a bidder's compliance plan as either a MBE or a WBE to demonstrate compliance with the Contract Specific Goals. For example, a firm that is certified as both a MBE and a WBE may only be listed on the bidder's compliance plan under one of the categories, but not both. Only Payments made to MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements above will be counted toward the Contract Specific Goals.

a. Only expenditures to firms that <u>perform a Commercially Useful Function as defined above may count toward the Contract Specific Goals</u>.

   i. The CPO will determine whether a firm is performing a commercially useful function by evaluating the amount of work subcontracted, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the credit claimed for its performance of the work, industry practices, and other relevant factors.

   ii. A MBE or WBE does not perform a commercially useful function if its participation is only required to receive payments in order to obtain the appearance of MBE or WBE participation. The CPO may examine similar commercial transactions, particularly those in which MBEs or WBEs do not participate, to determine whether non MBE and non WBE firms perform the same function in the marketplace to make a determination.

   iii. Indications that a subcontractor is not performing a commercially useful function include, but are not limited to, labor shifting and equipment sharing or leasing arrangements with the prime contractor or a first tier subcontractor.

b. Only the value of the dollars paid to the MBE or WBE firm <u>for work that it performs in its Area of Specialty</u> in which it is certified counts toward the Contract Specific Goals.

c. <u>For maintenance, installation, repairs or inspection, or professional services, if the MBE or WBE performs the work itself</u>: 100% of the value of work actually performed by the MBE's or WBE's own forces shall be counted toward the Contract Specific Goals, including the cost of supplies and materials purchased or equipment leased by the MBE or WBE from third parties or second tier subcontractors in order to perform its (sub)contract with its own forces (except supplies and equipment the MBE or WBE subcontractor purchases or leases from the prime contractor or its affiliate). 0% of the value of work at the project site that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals.

d. <u>If the MBE or WBE is a manufacturer</u>: 100% of expenditures to a MBE or WBE manufacturer for items needed for the Contract shall be counted toward the Contract Specific Goals. A manufacturer is a firm that operates or maintains a factory or establishment that produces on

the premises the materials or supplies obtained by the bidder or contractor.

e. If the MBE or WBE is a distributor or supplier: 60% of expenditures for materials and supplies purchased from a MBE or WBE that is certified as a regular dealer or supplier shall be counted toward the Contract Specific Goals.

f. If the MBE or WBE is a broker:

   i. Zero percent (0%) of expenditures paid to brokers will be counted toward the Contract Specific Goals.

   ii. As defined above, Brokers provide no commercially useful function.

g. If the MBE or WBE is a member of the joint venture contractor/bidder:

   i. A joint venture may count the portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the MBE or WBE performs with its own forces toward the Contract Specific Goals; or

   ii. If employees of this distinct joint venture entity perform the work then the value of the work may be counted toward the Contract Specific Goals at a rate equal to the MBE or WBE firm's percentage of participation in the joint venture as described in the Schedule B.

   iii. A joint venture may also count the dollar value of work subcontracted to other MBEs and WBEs.

h. If the MBE or WBE subcontracts out any of its work:

   i. 100% of the value of the work subcontracted to other MBEs or WBEs performing work in its Area of Specialty may be counted toward the Contract Specific Goals.

   ii. 0% of the value of work that a MBE or WBE subcontracts to a non-certified firm counts toward the Contract Specific Goals (except as allowed by (c) above).

   iii. The fees or commissions charged for providing a bona fide service, such as professional, technical, consulting or managerial services or for providing bonds or insurance and assistance in the procurement of essential personnel, facilities, equipment, materials or supplies required for performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   iv. The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

   v. The fees or commissions charged for providing any bonds or insurance, but not the cost of the premium itself, specifically required for the performance of the Contract, provided that the fee or commission is determined by the Chief Procurement Officer to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Regulations Governing Reductions to or Waiver of MBE/WBE Goals

The following Regulations set forth the standards to be used in determining whether or not a reduction or waiver of the MBE/WBE commitment goals of a particular contract is appropriate. If a bidder determines that it is unable to meet the MBE and/or WBE Contract-Specific Goals on a City of Chicago contract, a written request for the reduction or waiver of the commitment must be included in the bid or proposal.

The written request for reduction or waiver from the commitment must be in the form of a signed petition for

grant of relief from the MBE/WBE percentages submitted on the bidder's letterhead, and must demonstrate that all required efforts as set forth in this document were taken to secure eligible Minority and Women Business Enterprises to meet the commitments. The Chief Procurement Officer or designee shall determine whether the request for the reduction or waiver will be granted.

A bidder will be considered responsive to the terms and conditions of these Regulations if, at the time of bid, it submits a waiver request and all supporting documentation that adequately addresses the conditions for waiver of MBE/WBE goals, including proof of notification to assist agencies except:

- Bidders responding to Request for Proposals (RFPs) who have been identified as a short listed candidate and/or a prospective awardee will be given a designated time allowance, but no more than fourteen (14) calendar days to submit to the Department of Procurement Services complete documentation that adequately addresses the conditions for waiver described herein; and
- Bidders responding to Request for Information and or Qualifications (RFI/RFQs) deemed by the Chief Procurement Officer or authorized designee to be the most responsive and responsible shall submit documentation that adequately addresses the conditions for waiver described herein during negotiations.

Failure to submit documentation sufficient to support the waiver request will cause the bid/proposal to be found non-responsive by the Chief Procurement Officer, and the bid/proposal will be rejected. In such cases the remedies to be taken by the Chief Procurement Officer, in his or her discretion, may include, but are not limited to, forfeiture of bid deposit; negotiating with the next lowest bidder; or re-advertising the bid/proposal. All bidders must submit all required documents at the time of bid opening to expedite the contract award.

Direct / Indirect Participation

Each of the following elements must be present in order to determine whether or not such a reduction or waiver is appropriate.

a. The bidder has documented the unsuccessful solicitation for either subcontractors or joint venture partners of at least 50% (or at least five when there are more than eleven certified firms in the commodity area) of the appropriate certified MBE/WBE firms to perform any direct or indirect work identified or related to the advertised bid/proposal. Documentation must include but is not necessarily limited to:

1. A detailed statement of efforts to identify and select portions of work identified in the bid solicitation for subcontracting to certified MBE/WBE firms;
2. A listing of all MBE/WBE firms contacted that includes:
    - Name, address, telephone number and email of MBE/WBE firms solicited;
    - Date and time of contact;
    - Method of contact (written, telephone, transmittal of facsimile documents, email, etc.)
3. Copies of letters or any other evidence of mailing that substantiates outreach to MBE/WBE vendors that includes:
    - Project identification and location;
    - Classification/commodity of work items for which quotations were sought;
    - Date, item and location for acceptance of subcontractor bid proposals;

- Detailed statement which summarizes direct negotiations with appropriate MBE/WBE firms for specific portions of the work and indicates why negotiations were unsuccessful;
- Affirmation that Good Faith Efforts have been demonstrated by:
  - choosing subcontracting opportunities likely to achieve MBE/WBE goals;
  - not imposing any limiting conditions which were not mandatory for all subcontractors;
  - providing notice of subcontracting opportunities to M/WBE firms and assist agencies at least five (5) business days in advance of the initial bid due date.

OR

b. Subcontractor participation will be deemed excessively costly when the MBE/WBE subcontractor proposal exceeds the average price quoted by more than twenty percent (20%). In order to establish that a subcontractor's quote is excessively costly, the bidder must provide the following information:

1. A detailed statement of the work identified for MBE/WBE participation for which the bidder asserts the MBE/WBE quote(s) were excessively costly (in excess of 20% higher).
   - A listing of all potential subcontractors contacted for a quotation on that work item;
   - Prices quoted for the subcontract in question by all such potential subcontractors for that work item.
2. Other documentation which demonstrates to the satisfaction of the Chief Procurement Officer that the MBE/WBE proposals are excessively costly, even though not in excess of 20% higher than the average price quoted. This determination will be based on factors that include, but are not limited to the following:
   - The City's estimate for the work under a specific subcontract;
   - The bidder's own estimate for the work under the subcontract;
   - An average of the bona fide prices quoted for the subcontract;
   - Demonstrated increase in other contract costs as a result of subcontracting to the M/WBE or other firm.

Assist Agency Participation in wavier/reduction requests

Every waiver and/or reduction request must include evidence that the bidder has provided timely notice of the need for subcontractors to an appropriate association/assist agency representative of the MBE/WBE business community. This notice must be given at least five (5) business days in advance of the initial bid due date.

The notice requirement of this Section will be satisfied if a bidder contacts at least one of the associations on Attachment A to these Regulations when the prime contractor seeks a waiver or reduction in the utilization goals. Attachment B to these Regulations provides the letter format that a prime contractor may use. Proof of notification prior to bid submittal (e.g. certified mail receipt or facsimile transmittal receipt) will be required to be submitted with the bid for any bid/proposal to be deemed responsive. If deemed appropriate, the Contract Compliance Officer may contact the assist agency for verification of notification.

Impracticability

If the Chief Procurement Officer determines that a lesser MBE and/or WBE percentage standard is appropriate with respect to a particular contract subject to competitive bidding prior to the bid solicitations for such contract, bid specifications shall include a statement of such revised standard.

The requirements set forth in these Regulations (this subsection"**Regulations Governing Reductions to or Waiver of MBE/WBE Goals**") shall not apply where the Chief Procurement Officer determines prior to the bid solicitations that MBE/WBE subcontractor participation is impracticable.

This may occur whenever the Chief Procurement Officer determines that for reasons of time, need, industry practices or standards not previously known by the Chief Procurement Officer, or such other extreme circumstances as may be deemed appropriate, such a Waiver is in the best interests of the City. This determination may be made in connection with a particular contract, whether before the contract is let for bid, during the bid or award process, before or during negotiation of the contract, or during the performance of the contract.

For all notifications required to be made by bidders, in situations where the Chief Procurement Officer has determined that time is of the essence, documented telephone contact may be substituted for letter contact.

Procedure to Determine Bid Compliance

A bid may be rejected as non-responsive if it fails to submit one or more of the following with its bid demonstrating its Good Faith Efforts to meet the Contract Specific Goals by reaching out to MBEs and WBEs to perform work on the contract:

- An MBE/WBE compliance plan demonstrating how the bidder plans to meet the Contract Specific Goals; and/or
- A request for reduction or waiver of the Contract Specific Goals in accordance with Section 2-92-450 of the MCC.

Only compliance plans utilizing MBE and WBE firms that meet BOTH the Commercially Useful Function and Area of Specialty requirements will be counted toward the Contract Specific Goals.

The following Schedules and described documents constitute the bidder's MBE/WBE proposal, and must be submitted in accordance with the guidelines stated:

(1) Schedule C-1: Letter of Intent from MBE/WBE to Perform as Subcontractor, Supplier and/or Consultant.

The bidder must submit the appropriate Schedule C-1 with the bid for each MBE and WBE included on the Schedule D-1. Suppliers must submit the Schedule C-1 for Suppliers, first tier subcontractors must submit a Schedule C-1 for Subcontractors to the Prime Contractor and second or lower tier subcontractors must submit a Schedule C-1 for second tier Subcontractors. The City encourages subcontractors to utilize the electronic fillable format Schedule C-1, which is available at the Department of Procurement Services website, http://cityofchicago.org/forms. Each Schedule C-1 must be executed by each MBE and WBE and accurately detail the work to be performed by the MBE or WBE and the agreed upon rates/prices. Each Schedule C must also include a separate sheet as an attachment on which the MBE or WBE fully describes its proposed scope of work, including a description of the commercially useful function being performed by the MBE or WBE in its Area of Specialty. If a facsimile copy of the Schedule C-1 has been submitted with the bid, an executed original Schedule C-1 must be submitted by the bidder for each MBE and WBE included on the Schedule D-1 within five business days after the date of the bid opening.

Failure to submit a completed Schedule C-1 in accordance with this section shall entitle the City to deem the bid/proposal non-responsive and therefore reject the bid/proposal.

(2) Letters of Certification.

A copy of each proposed MBE/WBE firm's current Letter of Certification from the City of Chicago or Cook County Illinois, must be submitted with the bid/proposal. All Letters of Certification issued by the City of Chicago and Cook County include a statement of the MBE/WBE firm's Area of Specialty. The MBE/WBE firm's scope of work, as detailed by their Schedule C-1, must conform to their stated Area of Specialty. Letters of Certification for firms that the City or Cook County has found ineligible or has decertified will not be accepted.

(3) **Schedule B: Affidavit of Joint Venture, and Joint Venture Agreements (if applicable).**
If the bidder's MBE/WBE proposal includes the participation of a MBE/WBE as joint venture on any tier (either as the bidder or as a subcontractor), the bidder must provide a copy of the joint venture agreement and a Schedule B along with all other requirements listed in "**Joint Ventures,**" above. In order to demonstrate the MBE/WBE partner's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) contributions of capital and equipment; (2) work responsibilities or other performance to be undertaken by the MBE/WBE; and (3) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the contract. The joint venture agreement must also clearly define each partner's authority to contractually obligate the joint venture and each partner's authority to expend joint venture funds (e.g., check signing authority).

(4) **Schedule D-1: Required Schedules Regarding MBE/WBE Utilization**
Bidders must submit, together with the bid, a completed Schedule D-1 committing them to the utilization of each listed MBE/WBE firm. The City encourages bidders to utilize the electronic fillable format Schedule D-1, which is available at the Department of Procurement Services website, http://cityofchicago.org/forms. Except in cases where the bidder has submitted a request for a complete waiver of or variance from the MBE/WBE commitment in accordance with "**Regulations Governing Reductions to or Waiver of MBE/WBE Goals**" herein, the bidder must commit to the expenditure of a specific dollar amount of participation by each MBE/WBE firm included on their Schedule D-1. The total dollar commitment to proposed MBEs must at least equal the MBE goal, and the total dollar commitment to proposed WBEs must at least equal the WBE goal. Bidders are responsible for calculating the dollar equivalent of the MBE and WBE goals as percentages of their total base bids or in the case of Term Agreements, depends upon requirements agreements and blanket agreements, as percentages of the total estimated usage. All commitments made by the bidder's Schedule D-1 must conform to those presented in the submitted Schedule C-1. If Schedule C-1 is submitted after the opening, the bidder may submit a revised Schedule D-1 (executed and notarized to conform with the Schedules C-1). Bidders shall not be permitted to add MBEs or WBEs after bid opening to meet the Contract Specific Goals, however, contractors are encouraged to add additional MBE/WBE vendors to their approved compliance plan during the performance of the contract when additional opportunities for participation are identified. Except in cases where substantial and documented justification is provided, bidders will not be allowed to reduce the dollar commitment made to any MBE or WBE in order to achieve conformity between the Schedules C-1 and D-1.

All commitments for joint venture agreements must be delineated in the Schedule B.

(5) **Application for Approval of Mentor Protégé Agreement**
Any applications for City approval of a Mentor Protégé agreement must be included with the bid. If the application is not approved, the bidder must show that it has made good faith efforts to meet the contract specific goals.

Reporting Requirements During the Term of the Contract

a. The Contractor will, not later than thirty (30) calendar days from the award of a contract by the City, execute formal contracts or purchase orders with the MBEs and WBEs included in their approved MBE/WBE Utilization Plan. These written agreements will be made available to the Chief Procurement Officer upon request.

b. The Contractor will be responsible for reporting payments to all subcontractors on a monthly basis in the form of an electronic report. Upon the first payment issued by the City of Chicago to the contractor for services performed, on the first day of each month and every month thereafter, email and or fax audit notifications will be sent out to the Contractor with instructions to report payments that have been made in the prior month to each subcontractor. The reporting of payments to all subcontractors must be entered into the Certification and Compliance Monitoring System (C2), or whatever reporting system is currently in place, on or before the fifteenth (15th) day of each month.

c. Once the prime Contractor has reported payments made to each subcontractor, including zero dollar amount payments, the subcontractor will receive an email and or fax notification requesting them to log into the system and confirm payments received. All monthly confirmations must be reported on or before the 20th day of each month. Contractor and subcontractor reporting to the C2 system must be completed by the 25th of each month or payments may be withheld.

d. All subcontract agreements between the contractor and MBE/WBE firms or any first tier non-certified firm and lower tier MBE/WBE firms must contain language requiring the MBE/WBE to respond to email and/or fax notifications from the City of Chicago requiring them to report payments received for the prime or the non-certified firm.

Access to the Certification and Compliance Monitoring System (C2), which is a web based reporting system, can be found at: https://chicago.mwdbe.com

e. The Chief Procurement Officer or any party designated by the Chief Procurement Officer, shall have access to the contractor's books and records, including without limitation payroll records, tax returns and records and books of account, to determine the contractor's compliance with its commitment to MBE and WBE participation and the status of any MBE or WBE performing any portion of the contract. This provision shall be in addition to, and not a substitute for, any other provision allowing inspection of the contractor's records by any officer or official of the City for any purpose.

f. The Contractor shall maintain records of all relevant data with respect to the utilization of MBEs and WBEs, retaining these records for a period of at least five years after project closeout. Full access to these records shall be granted to City, federal or state authorities or other authorized persons.

Changes to Compliance Plan

Permissible Basis for Change Required

No changes to the Compliance Plan or contractual MBE and WBE commitments or substitution of MBE or WBE subcontractors may be made without the prior written approval of the Contract Compliance Officer. Unauthorized changes or substitutions, including performing the work designated for a subcontractor with the contractor's own forces, shall be a violation of these Special Conditions and a breach of the contract with the City, and may cause termination of the executed Contract for breach, and/or subject the bidder or contractor to contract remedies or other sanctions. The facts supporting the request for changes must not have been known nor reasonably could have been known by the parties prior to entering into the subcontract. Bid shopping is prohibited. The bidder or contractor must negotiate with the subcontractor to resolve the problem. If requested by either party, the Department of Procurement Services shall facilitate such a meeting. Where there has been a mistake or disagreement about the scope of work, the MBE or WBE can be substituted only where an agreement cannot be reached for a reasonable price for the correct scope of work.

Substitutions of a MBE or WBE subcontractor shall be permitted only on the following basis:

a) Unavailability after receipt of reasonable notice to proceed;

b) Failure of performance;

c) Financial incapacity;

d) Refusal by the subcontractor to honor the bid or proposal price or scope;

e) Mistake of fact or law about the elements of the scope of work of a solicitation where a reasonable price cannot be agreed;

f) Failure of the subcontractor to meet insurance, licensing or bonding requirements;

g) The subcontractor's withdrawal of its bid or proposal; or

h) De-certification of the subcontractor as a MBE or WBE (graduation from the MBE/WBE program does not constitute de-certification).

i) Termination of a Mentor Protégé Agreement.

Procedure for Requesting Approval

If it becomes necessary to substitute a MBE or WBE or otherwise change the Compliance Plan, the procedure will be as follows:

a) The bidder or contractor must notify the Contract Compliance Officer and Chief Procurement Officer in writing of the request to substitute a MBE or WBE or otherwise change the Compliance Plan. The request must state specific reasons for the substitution or change. A letter from the MBE or WBE to be substituted or affected by the change stating that it cannot perform on the contract or that it agrees with the change in its scope of work must be submitted with the request.

b) The City will approve or deny a request for substitution or other change within 15 business days of receipt of the written request.

c) Where the bidder or contractor has established the basis for the substitution to the satisfaction of the Chief Procurement Officer, it must make Good Faith Efforts to meet the Contract Specific Goal by substituting a MBE or WBE subcontractor. Documentation of a replacement MBE or WBE, or of Good Faith Efforts, must meet the requirements in section 5. If the MBE or WBE Contract Specific Goal cannot be reached and Good Faith Efforts have been made, as determined by the Chief Procurement Officer, the bidder or contractor may substitute with a non-MBE or non-WBE.

d) If a bidder or contractor plans to hire a subcontractor for any scope of work that was not previously disclosed in the Compliance Plan, the bidder or contractor must obtain the approval of the Chief Procurement Officer to modify the Compliance Plan and must make Good Faith Efforts to ensure that MBEs or WBEs have a fair opportunity to bid on the new scope of work.

e) A new subcontract must be executed and submitted to the Contract Compliance Officer within five business days of the bidder's or contractor's receipt of City approval for the substitution or other change.

The City shall not be required to approve extra payment for escalated costs incurred by the contractor when a substitution of subcontractors becomes necessary to comply with MBE/WBE contract requirements.

Non-Compliance and Damages

Without limitation, the following shall constitute a material breach of this contract and entitle the City to declare a default, terminate the contract, and exercise those remedies provided for in the contract, at law or in equity: (1) failure to demonstrate Good Faith Efforts; and (2) disqualification as a MBE or WBE of the contractor or any joint venture partner, subcontractor or supplier if its status as an MBE or WBE was a factor in the award of the contract and such status was misrepresented by the contractor.

Payments due to the contractor may be withheld until corrective action is taken.

Pursuant to MCC 2-92-445 or 2-92-740, as applicable, remedies or sanctions may include a penalty in the amount of the discrepancy between the amount of the commitment in the Compliance Plan, as such amount may be amended through change orders or otherwise over the term of the contract, and the amount paid to MBEs or WBEs, and disqualification from contracting or subcontracting on additional City contracts for up to three years. The consequences provided herein shall be in addition to any other criminal or civil liability to which such entities may be subject.

The contractor shall have the right to protest the final determination of non-compliance and the imposition of any penalty by the Chief Procurement Officer pursuant to MCC 2-92-445 or 2-92-740, within 15 business days of the final determination.

Arbitration

a) In the event a contractor has not complied with the contractual MBE/WBE percentages in its Schedule D, underutilization of MBEs/WBEs shall entitle the affected MBE/WBE to recover from the contractor damages suffered by such entity as a result of being underutilized; provided, however, that this provision shall not apply to the extent such underutilization occurs pursuant to a waiver or substitution approved by the City. The Ordinance and contracts subject thereto provide that any disputes between the contractor and such affected MBEs/WBEs regarding damages shall be resolved by binding arbitration before an independent arbitrator other than the City, with reasonable expenses, including attorney's fees, being recoverable by a prevailing MBE/WBE in accordance with these regulations. This provision is intended for the benefit of any MBE/WBE affected by underutilization and grants such entity specific third party beneficiary rights. Any rights conferred by this regulation are non-waivable and take precedence over any agreement to the contrary, including but not limited to those contained in a subcontract, suborder, or communicated orally between a contractor and a MBE/WBE.

b) An MBE/WBE desiring to arbitrate shall contact the contractor in writing to initiate the arbitrative process. Except as otherwise agreed to in writing by the affected parties subject to the limitation contained in the last sentence of the previous paragraph, within ten (10) calendar days of the contractor receiving notification of the intent to arbitrate from the MBE/WBE the above-described disputes shall be arbitrated in accordance with the Commercial Arbitration Rules of the American Arbitration Association (AAA), a not-for-profit agency, with an office at 225 North Michigan Avenue, Suite 2527, Chicago, Illinois 60601-7601 [Phone: (312) 616-6560; Fax: (312) 819-0404]. All such arbitrations shall be initiated by the MBE/WBE filing a demand for arbitration with the AAA; shall be conducted by the AAA; and held in Chicago, Illinois.

c) All arbitration fees are to be paid pro rata by the parties, however, that the arbitrator is authorized to award reasonable expenses, including attorney and arbitrator fees, as damages to a prevailing MBE/WBE.

d) The MBE/WBE must send the City a copy of the Demand for Arbitration within ten (10) calendar days after it is filed with the AAA. The MBE/WBE also must send the City a copy of the decision of the arbitrator within ten (10) calendar days of receiving such decision. Judgment upon the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

Equal Employment Opportunity

Compliance with MBE and WBE requirements will not diminish or supplant equal employment opportunity and civil rights provisions as required by law.

Attachments and Schedules

The following attachments and schedules follow, they may also be downloaded from the Internet at: http://www.cityofchicago.org/forms

- Attachment A: Assist Agencies
- Attachment B: Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals
- Schedule B: Affidavit of Joint Venture (MBE/WBE)
- Schedule C-1: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant
- Schedule D-1: Compliance Plan Regarding MBE/WBE Utilization

Attachment A –Assist Agency List

Assist Agencies are comprised of not-for-profit agencies and/or chamber of commerce agencies that represent the interest of small, minority and/or women owned businesses.

American Brotherhood of Contractors
935 West 175th Street
Homewood, Illinois 60430
Phone: (773) 491-5640
Email: arba@constructive-business.com

Asian American Business Expo
207 East Ohio St. Suite 218
Chicago, IL 60611
Phone: 312-233-2810
Fax: 312-268-6388
Email: Janny@AsianAmericanBusinessExpo.org

Asian American Institute
4753 N. Broadway St. Suite 904
Chicago, IL 60640
Phone: (773) 271-0899
Fax: (773) 271-1982
Email: kfernicola@aaichicago.org
Web: www.aaichicago.org

Association of Asian Construction Enterprises
333 N. Ogden Avenue
Chicago, IL 60607
Phone: (847) 525-9693
Email: nakmancorp@aol.com

Black Contractors United
400 W. 76th Street, Suite 200
Chicago, IL 60620
Phone: (773 483-4000
Fax: (773) 483-4150
Email: bcunewera@att.net
Web: www.blackcontractorsunited.com

Cosmopolitan Chamber of Commerce
203 N. Wabash, Suite 518
Chicago, IL 60601
Phone: (312) 499-0611
Fax: (312) 332-2688
Email: ccarey@cosmococ.org
Web: www.cosmochamber.org

Eighteenth Street Development Corporation
1843 South Carpenter
Chicago, Illinois 60608
Phone. (312) 733-2287
Fax: (773)-353-1683
asoto@eighteenthstreet.org
www.eighteenthstreet.org

Chatham Business Association Small Business Development, Inc.
8441 S. Cottage Grove Avenue
Chicago, IL 60619
Phone: (773)994-5006
Fax: (773)994-9871
Email: melkelcba@sbcglobal.net
Web: www.cbaworks.org

Chicago Area Gay & Lesbian Chamber of Commerce
3656 N. Halsted
Chicago, IL 60613
Phone: (773) 303-0167
Fax: (773) 303-0168
Email: info@glchamber.org
Web: www.glchamber.org

Chicago Minority Supplier Development Council, Inc.
105 W. Adams, Suite 2300
Chicago, IL 60603-6233
Phone: (312) 755-8880
Fax: (312) 755-8890
Email: pbarreda@chicagomsdc.org
Web: www.chicagomsdc.org

Chicago Urban League
4510 S. Michigan Ave.
Chicago, IL 60653
Phone: (773) 285-5800
Fax: (773) 285-7772
Email: president@thechicagourbanleague.org
Web: www.cul-chicago.org

Chicago Women in Trades (CWIT)
4425 S. Western Blvd.
Chicago, IL 60609-3032
Phone: (773) 376-1450
Fax: (312) 942-0802
Email: cwitinfo@cwit2.org
Web: www.chicagowomenintrades.org

Coalition for United Community Labor Force
1253 W. 63rd Street
Chicago, IL 60636
Phone. (312) 243-5149
Email: johnrev.hatchett@comcast.net

Federation of Women Contractors
5650 S. Archer Avenue
Chicago, IL 60638
Phone: (312) 360-1122
Fax: (312) 360-0239
Email: fwcchicago@aol.com
Web: www.fwcchicago.com

Hispanic American Construction Industry Association (HACIA)
650 West Lake Street
Chicago, IL 60661
Phone: (312) 666-5910
Fax: (312) 666-5692
Email: info@haciaworks.org
Web: www.haciaworks.org

Illinois Hispanic Chamber of Commerce
855 W. Adams, Suite 100
Chicago, IL 60607
Phone: (312) 425-9500
Fax: (312) 425-9510
Email: oduque@ihccbusiness.net
Web: www.ihccbusiness.net

Latin American Chamber of Commerce
3512 West Fullerton Avenue
Chicago, IL 60647
Phone: (773) 252-5211
Fax: (773) 252-7065
Email:d.lorenzopadron@latinamericanchamberofcommerce.com
Web: www.latinamericanchamberofcommerce.com

National Organization of Minority Engineers
33 West Monroe Suite 1540
Chicago, Illinois 60603
Phone: (312) 425-9560
Fax: (312) 425-9564
Email: shandy@infrastructure-eng.com
Web: www.nomeonline.org

National Association of Women Business Owners
Chicago Chapter
230 E. Ohio, Suite 400
Chicago, IL 60611
Phone: (312) 224-2605
Fax: (312) 6448557
Email: info@nawbochicago.org
Web: www.nawbochicago.org

Rainbow/PUSH Coalition
International Trade Bureau
930 E. 50th Street
Chicago, IL 60615
Phone: (773) 256-2781
Fax: (773) 373-4104
Email: bevans@rainbowpush.org
Web: www.rainbowpush.org

South Shore Chamber, Incorporated
Black United Funds Bldg.
1750 E. 71st Street
Chicago, IL 60649-2000
Phone: (773) 955- 9508
Email: sshorechamber@sbcglobal.net
Web: www.southshorechamberinc.org

Suburban Minority Contractors Association
1250 Grove Ave. Suite 200
Barrington, IL 60010
Phone: (847) 852-5010
Fax: (847) 382-1787
Email: aprilcobra@hotmail.com
Web: www.suburbanblackcontractors.org

Women Construction Owners & Executives (WCOE)
Chicago Caucus
308 Circle Avenue
Forest Park, IL 60130
Phone: (708) 366-1250
Fax: (708) 366-5418
Email: mkm@mkmservices.com
Web: www.wcoeusa.org

Women's Business Development Center
8 South Michigan Ave., Suite 400
Chicago, IL 60603
Phone: (312) 853-3477
Fax: (312) 853-0145
Email: fcurry@wbdc.org
Web: www.wbdc.org

Attachment B - Sample Format for Requesting Assist Agency Comments on Bidder's Request for Reduction or Waiver of MBE/WBE Goals

On Bidder/Proposer's Letterhead – SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY

RETURN RECEIPT REQUESTED

(Date)

Specification No.: 329656
Project Description: Request for Proposal ("RFP") for Operation of Concessions on the Chicago Riverwalk

(Assist Agency Name and Address – **SEND TO THE ASSIST AGENCIES – DO NOT SEND TO THE CITY**)

Dear _____:

_____ (Bidder/Proposer) intends to submit a bid/proposal in response to the above referenced specification with the City of Chicago. Bids are due _____ advertised specification with the City of Chicago.

The following areas have been identified for subcontracting opportunities on both a direct and indirect basis:

_____

_____

_____

Our efforts to identify potential subcontractors have not been successful in order to meet the Disadvantaged/ Minority/Women Business Enterprise contract goal. **Due to the inability to identify an appropriate DBE/MBE/WBE firm certified by the City of Chicago to participate as a subcontractor or joint venture partner, a request for the waiver of the contract goals will be submitted.** If you are aware of such a firm, please contact

_____

Name of Company Representative at Address/Phone

within (10) ten business days of receipt of this letter.

Under the City of Chicago's MBE/WBE/DBE Ordinance, your agency is entitled to comment upon this waiver request to the City of Chicago. Written comments may be directed within ten (10) working days of your receipt of this letter to:

Monica Jimenez, Deputy Procurement Officer
Department of Procurement Services
City of Chicago
121 North La Salle Street, Room 806
Chicago, Illinois 60602

If you wish to discuss this matter, please contact the undersigned at _____.

Sincerely,

SCHEDULE B: Affidavit of Joint Venture (MBE/WBE)

This form need not be submitted if all joint venturers are MBEs and/or WBEs. In such a case, however, a written joint venture agreement among the MBE and WBE venturers must be submitted. In all proposed joint ventures, each MBE and/or WBE venturer must submit a copy of their current Letter of Certification.

All Information Requested by this Schedule must Be Answered in the Spaces Provided. Do Not Refer to Your Joint Venture Agreement Except to Expand on Answers Provided on this Form. If Additional Space Is Required, Additional Sheets May Be Attached.

I. Name of joint venture: _____
Address of joint venture: _____
_____
Phone number of joint venture: _____

II. Identify each non-MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____

III. Identify each MBE/WBE venturer(s):
Name of Firm: _____
Address: _____
Phone: _____
Contact person for matters concerning MBE/WBE compliance: _____

IV Describe the role(s) of the MBE and/or WBE venturer(s) in the joint venture _____
_____
_____
_____

V. Attach a copy of the joint venture agreement. In order to demonstrate the MBE and/or WBE venturer's share in the ownership, control, management responsibilities, risks and profits of the joint venture, the proposed joint venture agreement must include specific details related to: (1) the contributions of capital and equipment; (2) work items to be performed by the MBE/WBE's own forces; (3) work items to be performed under the supervision of the MBE/WBE venturer, and (4) the commitment of management, supervisory and operative personnel employed by the MBE/WBE to be dedicated to the performance of the project.

VI. Ownership of the Joint Venture.
A. What are the percentage(s) of MBE/WBE ownership of the joint venture?
MBE/WBE ownership percentage(s) _____
Non-MBE/WBE ownership percentage(s) _____

B. Specify MBE/WBE percentages for each of the following (provide narrative descriptions and other detail as applicable):

1. Profit and loss sharing: _____

2. Capital contributions:
(a) Dollar amounts of initial contribution: _____

_____

(b) Dollar amounts of anticipated on-going contributions:_____

3. Contributions of equipment (Specify types, quality and quantities of equipment to be provided by each venturer):_____

4. Other applicable ownership interests, including ownership options or other agreements which restrict or limit ownership and/or control:_____

5. Provide copies of all written agreements between venturers concerning this project.

6. Identify each current City of Chicago contract (and each contract completed during the past two (2) years) by a joint venture of two or more firms participating in this joint venture:

VII. Control of and Participation in the Joint Venture Identify by name and firm those individuals who are, or will be, responsible for, and have the authority to engage in the following management functions and policy decisions. (Indicate any limitations to their authority such as dollar limits and co-signatory requirements):

A. Joint venture check signing:

B. Authority to enter contracts on behalf of the joint venture:

C. Signing, co-signing and/or collateralizing loans:

D Acquisition of lines of credit:

Schedule B: Affidavit of Joint Venture (MBE/WBE)

E. Acquisition and indemnification of payment and performance bonds:

F. Negotiating and signing labor agreements:

G. Management of contract performance. (Identify by name and firm only):

1. Supervision of field operations:

2 Major purchases:

3. Estimating:

4. Engineering:

VIII. Financial Controls of joint venture:

A. Which firm and/or individual will be responsible for keeping the books of account?

B. Identify the managing partner, if any, and describe the means and measure of their compensation

C What authority does each venturer have to commit or obligate the other to insurance and bonding companies, financing institutions, suppliers, subcontractors, and/or other parties participating in the performance of this contract or the work of this project?

IX. State the approximate number of operative personnel (by trade) needed to perform the joint venture's work under this contract. Indicate whether they will be employees of the non-MBE/WBE firm, the MBE/WBE firm, or the joint venture.

Schedule B: Affidavit of Joint Venture (MBE/WBE)

Trade	Non-MBE/WBE Firm (Number)	MBE/WBE (Number)	Joint Venture (Number)

If any personnel proposed for this project will be employees of the joint venture:

A. Are any proposed joint venture employees currently employed by either venturer?
Currently employed by non-MBE/WBE (number) ____ Employed by MBE/WBE ____

B. Identify by name and firm the individual who will be responsible for hiring joint venture employees:
_____

C. Which venturer will be responsible for the preparation of joint venture payrolls:
_____

X. Please state any material facts of additional information pertinent to the control and structure of this joint venture.

_____

Schedule B: Affidavit of Joint Venture (MBE/WBE)

The undersigned affirms that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operations of our joint venture and the intended participation of each venturer in the undertaking. Further, the undersigned covenant and agree to provide to the City current, complete and accurate information regarding actual joint venture work and the payment therefore, and any proposed changes in any provision of the joint venture agreement, and to permit the audit and examination of the books, records and files of the joint venture, or those of each venturer relevant to the joint venture by authorized representatives of the City or the Federal funding agency.

Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under federal or state laws concerning false statements.

Note: If, after filing this Schedule B and before the completion on the joint venture's work on the project, there is any change in the information submitted, the joint venture must inform the City of Chicago, either directly or through the prime contractor if the joint venture is a subcontractor.

Name of MBE/WBE Partner Firm	Firm	Name of Non-MBE/WBE Partner
Signature of Affiant		Signature of Affiant
Name and Title of Affiant		Name and Title of Affiant
Date		Date

On this _____ day of _____ , 20 ____ , the above-signed officers

_____,
(names of affiants)

personally appeared and, known to me be the persons described in the foregoing Affidavit, acknowledged that they executed the same in the capacity therein stated and for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

_____
Signature of Notary Public

My Commission Expires: _____

(SEAL)

Schedule C-1: Letter of Intent From MBE/WBE To Perform As Subcontractor, Supplier and/or Consultant

SCHEDULE C-1

MBE/WBE Letter of Intent to Perform as a Subcontractor, Supplier, or Consultant

FOR NON-CONSTRUCTION PROJECTS ONLY

Project Name:_____ Specification No.:_____

From:_____
(Name of MBE/WBE Firm)

To:_____and the City of Chicago.
(Name of Prime Contractor)

The MBE or WBE status of the undersigned is confirmed by the attached City of Chicago or Cook County, Illinois Certification Letter. 100% MBE or WBE participation is credited for the use of a MBE or WBE "manufacturer" 60% participation is credited for the use of a MBE or WBE "regular dealer."

The undersigned is prepared to perform the following services in connection with the above named project/contract. If more space is required to fully describe the MBE or WBE proposed scope of work and/or payment schedule, including a description of the commercially useful function being performed. Attach additional sheets as necessary:

_____
_____
_____

The above described performance is offered for the following price and described terms of payment:

_____
_____
_____

SUB-SUBCONTRACTING LEVELS

A zero (0) must be shown in each blank if the MBE or WBE will not be subcontracting any of the work listed or attached to this schedule

_____ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to non MBE/WBE contractors.

_____ % of the dollar value of the MBE or WBE subcontract that will be subcontracted to MBE or WBE contractors.

NOTICE: **If any of the MBE or WBE scope of work will be subcontracted, list the name of the vendor and attach a brief explanation, description and pay item number of the work that will be subcontracted. MBE/WBE credit will not be given for work subcontracted to Non-MBE/WBE contractors, except for as allowed in the Special Conditions Regarding Minority Business Enterprise Commitment and Women Business Enterprise Commitment.**

The undersigned will enter into a formal written agreement for the above work with you as a Prime Contractor, conditioned upon your execution of a contract with the City of Chicago, within three (3) business days of your receipt of a signed contract from the City of Chicago

The undersigned has entered into a formal written mentor protégé agreement as a subcontractor/protégé with you as a Prime Contractor/mentor: ( ) Yes ( ) No

NOTICE: **THIS SCHEDULE AND ATTACHMENTS REQUIRE ORIGINAL SIGNATURES.**

_____
(Signature of President/Owner/CEO or Authorized Agent of MBE/WBE) (Date)

_____
(Name/Title-Please Print)

_____
(Email & Phone Number)

SCHEDULE D-1
Compliance Plan Regarding MBE/WBE Utilization
Affidavit of Prime Contractor

FOR NON-CONSTRUCTION PROJECTS ONLY

MUST BE SUBMITTED WITH THE BID. FAILURE TO SUBMIT THE SCHEDULE D-1 WILL CAUSE THE BID TO BE REJECTED. DUPLICATE AS NEEDED.

Project Name:_____

Specification No :_____

In connection with the above captioned contract, I HEREBY DECLARE AND AFFIRM that I am a duly authorized representative of _____.
(Name of Prime Consultant/Contractor)

and that I have personally reviewed the material and facts set forth herein describing our proposed plan to achieve the MBE/WBE goals of this contract

All MBE/WBE firms included in this plan have been certified as such by the City of Chicago and/or Cook County, Illinois (Letters of Certification Attached)

I. **Direct Participation of MBE/WBE Firms:**

NOTE: The bidder/proposer shall, in determining the manner of MBE/WBE participation, first consider involvement with MBE/WBE firms as joint venture partners, subcontractors, and suppliers of goods and services directly related to the performance of this contract

A If bidder/proposer is a joint venture and one or more joint venture partners are certified MBEs or WBEs, attach copies of Letters of Certification, Schedule B form and a copy of Joint Venture Agreement clearly describing the role of each MBE/WBE firm(s) and its ownership interest in the joint venture

B. Complete this section for each MBE/WBE Subcontractor/Supplier/Consultant participating on this contract:

1. Name of MBE/WBE:_____

   Address._____

   Contact Person _____

   Phone Number _____

   Dollar Value of Participation $_____

   Percentage of Participation % _____

   Mentor Protégé Agreement (attach executed copy). ( ) Yes ( ) No Add'l Percentage Claimed [1] ____%

   Total Participation % _____

2. Name of MBE/WBE _____

   Address _____

   Contact Person _____

[1] The Prime Contractor may claim an additional 0.333 percent participation credit (up to a maximum of five (5) percent) for every one (1) percent of the value of the contract performed by the MBE/WBE protégé firm

Phone Number:_____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: ____%

Total Participation % _____

3. Name of MBE/WBE _____

Address._____

Contact Person:_____

Phone Number _____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy). ( ) Yes ( ) No Add'l Percentage Claimed ____%

Total Participation % _____

4. Name of MBE/WBE._____

Address:_____

Contact Person._____

Phone Number._____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy) ( ) Yes ( ) No Add'l Percentage Claimed ____%

Total Participation % _____

5. Attach Additional Sheets as Needed

II. Indirect Participation of MBE/WBE Firms

NOTE: This section need not be completed if the MBE/WBE goals have been met through the direct participation outlined in Section I If the MBE/WBE goals have not been met through direct participation, Contractor will be expected to demonstrate that the proposed MBE/WBE direct participation represents the maximum achievable under the circumstances Only after such a demonstration will indirect participation be considered.

MBE/WBE Subcontractors/Suppliers/Consultants proposed to perform work or supply goods or services where such performance does not directly relate to the performance of this contract:

1. Name of MBE/WBE _____

Address _____

Contact Person _____

Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

Phone Number:_____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: ____%

Total Participation % _____

2. Name of MBE/WBE:_____

Address:_____

Contact Person:_____

Phone Number:_____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy): ( ) Yes ( ) No Add'l Percentage Claimed: ____%

Total Participation % _____

3. Name of MBE/WBE:_____

Address _____

Contact Person:_____

Phone Number:_____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy). ( ) Yes ( ) No Add'l Percentage Claimed: ____%

Total Participation % _____

4. Name of MBE/WBE _____

Address:_____

Contact Person:_____

Phone Number._____

Dollar Value of Participation $_____

Percentage of Participation % _____

Mentor Protégé Agreement (attach executed copy) ( ) Yes ( ) No Add'l Percentage Claimed ____%

Total Participation % _____

5. Attach Additional Sheets as Needed

Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

III. Summary of MBE/WBE Proposal

A. MBE Proposal **(Direct & Indirect)**

1 MBE Direct Participation

MBE Firm Name	Dollar Amount Participation ($)	Percent Amount Participation (%)
Total Direct MBE Participation		

2. MBE Indirect Participation

MBE Firm Name	Dollar Amount Participation ($)	Percent Amount Participation (%)
Total Indirect MBE Participation		

B. WBE Proposal **(Direct & Indirect)**

1. WBE Direct Participation

WBE Firm Name	Dollar Amount Participation ($)	Percent Amount Participation (%)
Total Direct WBE Participation		

2. WBE Indirect Participation

WBE Firm Name	Dollar Amount Participation ($)	Percent Amount Participation (%)
Total Indirect WBE Participation		

Schedule D-1: Prime Contractor Affidavit-MBE/WBE Compliance Plan

The Prime Contractor designates the following person as its MBE/WBE Liaison Officer:

_____

(Name- Please Print or Type) (Phone)

I DO SOLEMNLY DECLARE AND AFFIRM UNDER PENALTIES OF PERJURY THAT THE CONTENTS OF THE FOREGOING DOCUMENT ARE TRUE AND CORRECT, THAT NO MATERIAL FACTS HAVE BEEN OMITTED, AND THAT I AM AUTHORIZED ON BEHALF OF THE PRIME CONTRACTOR TO MAKE THIS AFFIDAVIT.

_____

(Name of Prime Contractor – Print or Type)

State of:_____

_____

(Signature)

County of:_____

_____

(Name/Title of Affiant – Print or Type)

_____

(Date)

On this_____day of_____, 20____, the above signed officer _____

(Name of Affiant)

personally appeared and, known by me to be the person described in the foregoing Affidavit, acknowledged that (s)he executed the same in the capacity stated therein and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and seal

_____

(Notary Public Signature)

SEAL.

Commission Expires _____

EXHIBIT 8

ECONOMIC DISCLOSURE STATEMENT

CITY OF CHICAGO
ECONOMIC DISCLOSURE STATEMENT and AFFIDAVIT
Related to Contract/Amendment/Solicitation
EDS # 105490

SECTION I -- GENERAL INFORMATION

A. Legal name of the Disclosing Party submitting the EDS:

Spice Inc.

Enter d/b/a if applicable:

The Northman

The Disclosing Party submitting this EDS is:

the Applicant

B. Business address of the Disclosing Party:

4337 N. Lincoln Ave.
Chicago, IL 60618
United States

C. Telephone:

773-619-6973

Fax:

Email:

aaron@fountainheadchicago.com

D. Name of contact person:

Mr. Aaron Zacharias

E. Federal Employer Identification No. (if you have one):

F. Brief description of contract, transaction or other undertaking (referred to below as the "Matter") to which this EDS pertains:

Riverwalk RFP

Which City agency or department is requesting this EDS?

DEPT OF PROCUREMENT SERVICES

Specification Number

329656

Contract (PO) Number

Revision Number

Release Number

User Department Project Number

SECTION II -- DISCLOSURE OF OWNERSHIP INTERESTS

A. NATURE OF THE DISCLOSING PARTY

1. Indicate the nature of the Disclosing Party:

Privately held business corporation

Is the Disclosing Party incorporated or organized in the State of Illinois?

Yes

B. DISCLOSING PARTY IS A LEGAL ENTITY:

1.a.1 Does the Disclosing Party have any directors?

Yes

1.a.3 List below the full names and titles of all executive officers and all directors, if any, of the entity. Do not include any directors who have no power to select the entity's officers.

Officer/Director:	Mr. Aaron Zacharias
Title:	President
Role:	Both
Officer/Director:	Scott Morgan
Title:	Secretary
Role:	Both
Officer/Director:	Mrs. Deborah Putman
Title:	Treasurer
Role:	Both
Officer/Director:	Mr. David Putman
Title:	Vice President
Role:	Both

2. Ownership Information

Please provide ownership information concerning each person or entity having a direct or indirect beneficial interest in excess of 7.5% of the Disclosing Party. Examples of such an interest include shares in a corporation, partnership interest in a partnership or joint venture, interest of a member or manager in a limited lability company, or interest of a beneficiary of a trust, estate, or other similar entity. Note: Pursuant to Section 2-154-030 of the Municipal code of Chicago, the City may require any such additional information from any applicant which is reasonably intended to achieve full disclosure.

- Mr. David Putman -
- Mrs. Deborah Putman -
- Mr. Scott Morgan -
- Mr. Aaron Zacharias -

Owner Details

Name	Address
Mr. Aaron Zacharias	4337 N. Lincoln Ave. Chicago, IL 60618 United States

Mr. David Putman	4337 N. Lincoln Ave. Chicago, IL 60618 United States
Mr. Scott Morgan	4337 N. Lincoln Ave. Chicago, IL 60618 United States
Mrs. Deborah Putman	4337 N. Lincoln Ave. Chicago, IL 60618 United States

SECTION III -- BUSINESS RELATIONSHIPS WITH CITY ELECTED OFFICIALS

Has the Disclosing Party had a "business relationship," as defined in Chapter 2-156 of the Municipal Code, with any City elected official in the 12 months before the date this EDS is signed?

No

SECTION IV -- DISCLOSURE OF SUBCONTRACTORS AND OTHER RETAINED PARTIES

The Disclosing Party must disclose the name and business address of each subcontractor, attorney, lobbyist, accountant, consultant and any other person or entity whom the Disclosing Party has retained or expects to retain in connection with the Matter, as well as the nature of the relationship, and the total amount of the fees paid or estimated to be paid. The Disclosing Party is not required to disclose employees who are paid solely through the Disclosing Party's regular payroll.

"Lobbyist" means any person or entity who undertakes to influence any legislative or administrative action on behalf of any person or entity other than: (1) a not-for-profit entity, on an unpaid basis, or (2) himself. "Lobbyist" also means any person or entity any part of whose duties as an employee of another includes undertaking to influence any legislative or administrative action.

If the Disclosing Party is uncertain whether a disclosure is required under this Section, the Disclosing Party must either ask the City whether disclosure is required or make the disclosure.

1. Has the Disclosing Party retained any legal entities in connection with the Matter?

Yes

2. List below the names of all legal entities which are retained parties.

Name:	Zubin Kammula
Anticipated/ Retained:	Retained
Business Address:	150 N. Wacker Drive Ste. 2525 Chicago, IL 60606 United States
Relationship:	Attorney
Fees ($$ or %):	$1000
Estimated/Paid:	Estimated

3. Has the Disclosing Party retained any persons in connection with the Matter?

Yes

4. List below the names of all persons who are retained parties.

Name:	Zubin Kammula
Anticipated/ Retained:	Retained
Business Address:	150 N. Wacker Drive Ste. 2525 , IL 60606 United States
Relationship:	Attorney
Fees ($$ or %):	$1000
Estimated/Paid:	Estimated

SECTION V -- CERTIFICATIONS

A. COURT-ORDERED CHILD SUPPORT COMPLIANCE

Under Municipal Code Section 2-92-415, substantial owners of business entities that contract with the City must remain in compliance with their child support obligations throughout the contract's term.

Has any person who directly or indirectly owns 10% or more of the Disclosing Party been declared in arrearage of any child support obligations by any Illinois court of competent jurisdiction?

No

B. FURTHER CERTIFICATIONS

1. Pursuant to Municipal Code Chapter 1-23, Article I ("Article I")(which the Applicant should consult for defined terms (e.g., "doing business") and legal requirements), if the Disclosing Party submitting this EDS is the Applicant and is doing business with the City, then the Disclosing Party certifies as follows:

i. neither the Applicant nor any controlling person is currently indicted or charged with, or has admitted guilt of, or has ever been convicted of, or placed under supervision for, any criminal offense involving actual, attempted, or conspiracy to commit bribery, theft, fraud, forgery, perjury, dishonesty or deceit against an officer or employee of the City or any sister agency; and
ii. the Applicant understands and acknowledges that compliance with Article I is a continuing requirement for doing business with the City.

NOTE: If Article I applies to the Applicant, the permanent compliance timeframe in Article I supersedes some five-year compliance timeframes in certifications 2 and 3 below.

I certify the above to be true

2. The Disclosing Party and, if the Disclosing Party is a legal entity, all of those persons or entities identified in Section II.B.1. of this EDS:

a. are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from any transactions by any federal, state or local unit of government;
b. have not, within a five-year period preceding the date of this EDS, been convicted of a criminal offense, adjudged guilty, or had a civil judgment rendered against them in connection with: obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction; a violation of federal or state antitrust statutes; fraud; embezzlement; theft; forgery; bribery; falsification or destruction of records; making false statements; or receiving stolen property;
c. are not presently indicted for, or criminally or civilly charged by, a governmental entity (federal, state or local) with committing any of the offenses set forth in clause B.2.b. of this Section V;
d. have not, within a five-year period preceding the date of this EDS, had one or more public transactions (federal, state or local) terminated for cause or default; and
e. have not, within a five-year period preceding the date of this EDS, been convicted, adjudged guilty, or found liable in a civil proceeding, or in any criminal or civil action, including actions concerning environmental violations, instituted

by the City or by the federal government, any state, or any other unit of local government.

I certify the above to be true

3. Neither the Disclosing Party, nor any Contractor, nor any Affiliated Entity of either the Disclosing Party or any Contractor nor any Agents have, during the five years before the date this EDS is signed, or, with respect to a Contractor, an Affiliated Entity, or an Affiliated Entity of a Contractor during the five years before the date of such Contractor's or Affiliated Entity's contract or engagement in connection with the Matter:

a. bribed or attempted to bribe, or been convicted or adjudged guilty of bribery or attempting to bribe, a public officer or employee of the City, the State of Illinois, or any agency of the federal government or of any state or local government in the United States of America, in that officer's or employee's official capacity;
b. agreed or colluded with other bidders or prospective bidders, or been a party to any such agreement, or been convicted or adjudged guilty of agreement or collusion among bidders or prospective bidders, in restraint of freedom of competition by agreement to bid a fixed price or otherwise; or
c. made an admission of such conduct described in a. or b. above that is a matter of record, but have not been prosecuted for such conduct; or
d. violated the provisions of Municipal Code Section 2-92-610 (Living Wage Ordinance).

I certify the above to be true

4. Neither the Disclosing Party, Affiliated Entity or Contractor, or any of their employees, officials, agents or partners, is barred from contracting with any unit of state or local government as a result of engaging in or being convicted of

- bid-rigging in violation of 720 ILCS 5/33E-3;
- bid-rotating in violation of 720 ILCS 5/33E-4; or
- any similar offense of any state or of the United States of America that contains the same elements as the offense of bid-rigging or bid-rotating.

I certify the above to be true

5. Neither the Disclosing Party nor any Affiliated Entity is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the Bureau of Industry and Security of the U.S. Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List.

I certify the above to be true

6. The Disclosing Party understands and shall comply with the applicable requirements of Chapters 2-55 (Legislative Inspector General), Chapter 2-56 (Inspector General) and Chapter 2-156 (Governmental Ethics) of the Municipal Code.

I certify the above to be true

7. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all current employees of the Disclosing Party who were, at any time during the 12-month period preceding the execution date of this EDS, an employee, or elected or appointed official, of the City of Chicago.

None

8. To the best of the Disclosing Party's knowledge after reasonable inquiry, the following is a complete list of all gifts that the Disclosing Party has given or caused to be given, at any time during the 12-month period preceding the execution date of this EDS, to an employee, or elected or appointed official, of the City of Chicago. For purposes of this statement, a "gift" does not include: (i) anything made generally available to City employees or to the general public, or (ii) food or drink provided in the course of official City business and having a retail value of less than $20 per recipient.

None

C. CERTIFICATION OF STATUS AS FINANCIAL INSTITUTION

The Disclosing Party certifies that, as defined in Section 2-32-455(b) of the Municipal Code, the Disclosing Party

is not a "financial institution"

D. CERTIFICATION REGARDING INTEREST IN CITY BUSINESS

Any words or terms that are defined in Chapter 2-156 of the Municipal Code have the same meanings when used in this Part D.

1. In accordance with Section 2-156-110 of the Municipal Code: Does any official or employee of the City have a financial interest in his or her own name or in the name of any other person or entity in the Matter?

No

E. CERTIFICATION REGARDING SLAVERY ERA BUSINESS

If the Disclosing Party cannot make this verification, the Disclosing Party must disclose all required information in the space provided below or in an attachment in

the "Additional Info" tab. Failure to comply with these disclosure requirements may make any contract entered into with the City in connection with the Matter voidable by the City.

The Disclosing Party verifies that the Disclosing Party has searched any and all records of the Disclosing Party and any and all predecessor entities regarding records of investments or profits from slavery or slaveholder insurance policies during the slavery era (including insurance policies issued to slaveholders that provided coverage for damage to or injury or death of their slaves), and the Disclosing Party has found no such records.

I can make the above verification

SECTION VI -- CERTIFICATIONS FOR FEDERALLY-FUNDED MATTERS

Is the Matter federally funded? For the purposes of this Section VI, tax credits allocated by the City and proceeds of debt obligations of the City are not federal funding.

No

SECTION VII -- ACKNOWLEDGMENTS, CONTRACT INCORPORATION, COMPLIANCE, PENALTIES, DISCLOSURE

The Disclosing Party understands and agrees that:

A. The certifications, disclosures, and acknowledgments contained in this EDS will become part of any contract or other agreement between the Applicant and the City in connection with the Matter, whether procurement, City assistance, or other City action, and are material inducements to the City's execution of any contract or taking other action with respect to the Matter. The Disclosing Party understands that it must comply with all statutes, ordinances, and regulations on which this EDS is based.

B. The City's Governmental Ethics and Campaign Financing Ordinances, Chapters 2-156 and 2-164 of the Municipal Code, impose certain duties and obligations on persons or entities seeking City contracts, work, business, or transactions. A training program is available on line at www.cityofchicago.org/city/en/depts/ethics.html, and may also be obtained from the City's Board of Ethics, 740 N. Sedgwick St., Suite 500, Chicago, IL 60610, (312) 744-9660. The Disclosing Party must comply fully with the applicable ordinances.

I acknowledge and consent to the above

The Disclosing Party understands and agrees that:

C. If the City determines that any information provided in this EDS is false, incomplete or inaccurate, any contract or other agreement in connection with which it is submitted may be rescinded or be void or voidable, and the City may pursue any remedies under the contract or agreement (if not rescinded or void), at law, or in equity, including terminating the Disclosing Party's participation in the Matter and/or declining to allow the Disclosing Party to participate in other transactions with the City. Remedies at law for a false statement of material fact may include incarceration and an award to the City of treble damages.

D. It is the City's policy to make this document available to the public on its Internet site and/or upon request. Some or all of the information provided on this EDS and any attachments to this EDS may be made available to the public on the Internet, in response to a Freedom of Information Act request, or otherwise. By completing and signing this EDS, the Disclosing Party waives and releases any possible rights or claims which it may have against the City in connection with the public release of information contained in this EDS and also authorizes the City to verify the accuracy of any information submitted in this EDS.

E. The information provided in this EDS must be kept current. In the event of changes, the Disclosing Party must supplement this EDS up to the time the City takes action on the Matter. If the Matter is a contract being handled by the City's Department of Procurement Services, the Disclosing Party must update this EDS as the contract requires. NOTE: With respect to Matters subject to Article I of Chapter 1-23 of the Municipal Code (imposing PERMANENT INELIGIBILITY for certain specified offenses), the information provided herein regarding eligibility must be kept current for a longer period, as required by Chapter 1-23 and Section 2-154-020 of the Municipal Code.

I acknowledge and consent to the above

The Disclosing Party represents and warrants that:

F.1. The Disclosing Party is not delinquent in the payment of any tax administered by the Illinois Department of Revenue, nor are the Disclosing Party or its Affiliated Entities delinquent in paying any fine, fee, tax or other charge owed to the City. This includes, but is not limited to, all water charges, sewer charges, license fees, parking tickets, property taxes or sales taxes.

I certify the above to be true

F.2 If the Disclosing Party is the Applicant, the Disclosing Party and its Affiliated Entities will not use, nor permit their subcontractors to use, any facility listed by the U.S. E.P.A. on the federal Excluded Parties List System ("EPLS") maintained by the U.S. General Services Administration.

I certify the above to be true

F.3 If the Disclosing Party is the Applicant, the Disclosing Party will obtain from any contractors/subcontractors hired or to be hired in connection with the Matter certifications equal in form and substance to those in F.1. and F.2. above and will not, without the prior written consent of the City, use any such contractor/subcontractor that does not provide such certifications or that the Disclosing Party has reason to believe has not provided or cannot provide truthful certifications.

I certify the above to be true

FAMILIAL RELATIONSHIPS WITH ELECTED CITY OFFICIALS AND DEPARTMENT HEADS

This question is to be completed only by (a) the Applicant, and (b) any legal entity which has a direct ownership interest in the Applicant exceeding 7.5 percent. It is not to be completed by any legal entity which has only an indirect ownership interest in the Applicant.

Under Municipal Code Section 2-154-015, the Disclosing Party must disclose whether such Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently has a "familial relationship" with any elected city official or department head. A "familial relationship" exists if, as of the date this EDS is signed, the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof is related to the mayor, any alderman, the city clerk, the city treasurer or any city department head as spouse or domestic partner or as any of the following, whether by blood or adoption: parent, child, brother or sister, aunt or uncle, niece or nephew, grandparent, grandchild, father-in-law, mother-in-law, son-in-law, daughter-in-law, stepfather or stepmother, stepson or stepdaughter, stepbrother or stepsister or half-brother or half-sister.

"Applicable Party" means (1) all corporate officers of the Disclosing Party, if the Disclosing Party is a corporation; all partners of the Disclosing Party, if the Disclosing Party is a general partnership; all general partners and limited partners of the Disclosing Party, if the Disclosing Party is a limited partnership; all managers, managing members and members of the Disclosing Party, if the Disclosing Party is a limited liability company; (2) all principal officers of the Disclosing Party; and (3) any person having more than a 7.5 percent ownership interest in the Disclosing Party. "Principal officers" means the president, chief operating officer, executive director, chief financial officer, treasurer or secretary of a legal entity or any person exercising similar authority.

Does the Disclosing Party or any "Applicable Party" or any Spouse or Domestic Partner thereof currently have a "familial relationship" with an elected city official or department head?

No

APPENDIX B - BUILDING CODE SCOFFLAW/PROBLEM LANDLORD CERTIFICATION

Pursuant to Municipal Code Section 2-154-010, is the Applicant or any Owner identified as a building code scofflaw or problem landlord pursuant to Section 2-92-416 of the Municipal Code?

No

ADDITIONAL INFO

Please add any additional explanatory information here. If explanation is longer than 1000 characters, you may add an attachment below. Please note that your EDS, including all attachments, becomes available for public viewing upon contract award. Your attachments will be viewable "as is" without manual redaction by the City. You are responsible for redacting any non-public information from your documents before uploading.

List of vendor attachments uploaded by City staff

None.

List of attachments uploaded by vendor

None.

CERTIFICATION

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

/s/ 03/08/2017
Mr. Aaron Zacharias
President
Spice Inc.

This is a printed copy of the Economic Disclosure Statement, the original of which is filed electronically with the City of Chicago. Any alterations must be made electronically, alterations on this printed copy are void and of no effect.

(DO NOT SUBMIT THIS PAGE WITH YOUR EDS. The purpose of this page is for you to recertify your EDS prior to submission to City Council or on the date of closing. If unable to recertify truthfully, the Disclosing Party must complete a new EDS with correct or corrected information)

RECERTIFICATION

Generally, for use with City Council matters. Not for City procurements unless requested.

This recertification is being submitted in connection with Riverwalk Concession Contract [identify the Matter]. Under penalty of perjury, the person signing below: (1) warrants that he/she is authorized to execute this EDS recertification on behalf of the Disclosing Party, (2) warrants that all certifications and statements contained in the Disclosing Party's original EDS are true, accurate and complete as of the date furnished to the City and continue to be true, accurate and complete as of the date of this recertification, and (3) reaffirms its acknowledgments.

Spice Inc. d/b/a The Northman — Date: 1/11/2018

(Print or type legal name of Disclosing Party)

By:

(sign here)

Print or type name of signatory:

Aaron Zacharias

Title of signatory:

President

Signed and sworn to before me on [date] 1/11/18, by Micaael D. O'Connor, at Cook County, Illinois [state].

Notary Public.

Commission expires: 8/24/19.

"OFFICIAL SEAL"
MICHAEL D. O'CONNOR
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 08/24/2019

Ver. 11-01-05