



**Request for Qualifications 274-1-PullCafe-2026**

**Title: Pullen Park Café Operation**

**Issue Date:** May 28, 2026

**Due Date:** August 10, 2026, not later than 5:00PM EST

**\*LATE PROPOSALS WILL NOT BE ACCEPTED\***

**Issuing Department:** *Parks, Recreation and Cultural Resources*

**Direct all inquiries concerning this RFQ to:**

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# Table of Contents

|           |  |           |
|-----------|--|-----------|
| <b>1.</b> | <b>Introduction</b> .....  | <b>3</b>  |
| 1.1.      | Purpose.....   | 3         |
| 1.2.      | Background.....  | 4         |
| 1.3.      | RFQ Timeline.....  | 6         |
| 1.4.      | Pre-Submittal Conference.....                                      | 6         |
| 1.5.      | Questions.....   | 6         |
| 1.6.      | Submittal Requirements and Contact Information.....                | 7         |
| 1.7.      | Business Engagement and Opportunities.....                         | 8         |
| 1.8.      | Rights to Submitted Material.....                                  | 8         |
| 1.9.      | Communications.....  | 8         |
| 1.10.     | Lobbying.....  | 8         |
| 1.11.     | Conflicts of Interest.....   | 8         |
| 1.12.     | Proposer Expenses.....   | 9         |
| 1.13.     | Proposer Acceptance.....   | 9         |
| <b>2.</b> | <b>Qualifications Package</b> .....                                | <b>10</b> |
| 2.1.      | Request for Qualifications Required Document Format.....           | 10        |
| 2.2.      | Hourly Rates.....  | 10        |
| 2.3.      | Qualifications Package Documents.....                              | 12        |
| <b>3.</b> | <b>Proposal Evaluation</b> .....                                   | <b>12</b> |
| 3.1.      | Evaluation Criteria.....   | 12        |
| 3.2.      | Final Selection.....   | 12        |
| 3.3.      | Notice to Proposers Regarding RFQ Terms & Conditions.....          | 13        |
| 3.4.      | Contract Term.....   | 13        |
| <b>4.</b> | <b>Scope of Services</b> .....                                     | <b>13</b> |
|           | <b>Appendix I – Map of Licensed Building</b> .....                 | <b>17</b> |
|           | <b>Appendix II – Proposer Questionnaire</b> .....                  | <b>20</b> |
|           | <b>Appendix III – Reference Questionnaire (Instructions)</b> ..... | <b>21</b> |
|           | <b>Appendix III – Reference Questionnaire Form</b> .....           | <b>22</b> |
|           | <b>Appendix IV – Sample Contract</b> .....                         | <b>24</b> |
|           | <b>Appendix V – Service Obligations</b> .....                      | <b>52</b> |
|           | <b>Appendix VI – Anticipated License Fee Schedule</b> .....        | <b>53</b> |

# 1 INTRODUCTION

## 1.1 Purpose

**The City of Raleigh is seeking a partner to operate the café space at Pullen Park Amusements.** The café includes a 1,988 square foot building with nearly 70 feet of frontage, accompanied by an adjacent 1,950 square foot outdoor seating area. The Operator will be the exclusive “brick and mortar” provider of food and beverage in the park, including beer and wine. All food concept proposals are welcome!

**Utilize in-place amenities and make the Café and outdoor seating your own.** On the front end, the building is designed with multiple points for walk-up window service. The back of house consists of a kitchen and office already equipped with a walk-in-cooler, dry storage, fume exhaust hood, grease trap interceptor, and hand, food prep, and dishwashing sinks. Most utilities are covered by the City of Raleigh. ***The City of Raleigh can assist with additional upfit costs, to be negotiated with the selected operator.***

**Guests enjoy the scenery of Pullen Park with their meal as part of a fun family day outside.** Pullen Amusements welcomes over one million visitors each year with an abundance of historic attractions and activities, including a miniature train, historic carousel, kiddie boats, carnival games, pedal boats, large playground, and more. The outdoor seating, picnic shelters, and a top-notch café encourage guests to extend their visit all day.

**Join park events that welcome thousands of visitors throughout the year.** Families flock to Holiday Express each December, with last year’s event drawing over 42,000 people over three weeks. Additional events have included a summer concert series, movie nights, egg hunts, and more. The café operator is an important partner during these events, ensuring guests’ comfort and enhancing their experiences.

**Pullen Amusements is just one part of the larger Pullen Park campus.** Stretching over 66.4 acres, Pullen Park includes an aquatics center, community center, athletic fields, arts center, and the renowned Theatre in the Park. The Café Operator will join this exceptional line-up.

**A network of recreational and innovative destinations in the area.** On the edge of downtown Raleigh, Pullen Park is just steps away from NC State University, Dix Park, the Capital Area Greenway, and more - destinations with exciting new features drawing visitors to the area.

**History plays at Pullen Park!** Opened in 1887 as North Carolina’s first public park, Pullen Park is the fifth oldest operating amusement park in the country. The Café operator is an important contributor to the park and food concepts that engage the park’s history are encouraged.

The City of Raleigh is seeking one or more qualified firm(s) with which to contract for the following services:

The City of Raleigh, NC is soliciting proposals to identify individuals and/or businesses qualified to operate a café concession space at Pullen Park. This RFQ is designed for those interested in creating a licensor/licensee relationship to operate a food service concession within the City-owned café space located at the park at 520 Ashe Avenue, Raleigh, NC. The selected operator will operate the café according to the terms and conditions as outlined in this RFQ and the subsequent license agreement signed by the selected operator. Notwithstanding any reference to a contract or lease in this RFQ, the City intends to execute a license agreement with a selected operator allowing the selected operator to operate a food service concession within the café space in Pullen Park in accordance with the rights and obligations of each party to the license agreement. The City will not convey any property interest in any part of Pullen Park to the selected operator from this RFQ process.

A detailed scope of services is provided in Section 4 of this document.

All information related to this solicitation, including any addenda, will be posted to the North Carolina electronic Vendor Portal (eVP) at <https://evp.nc.gov/>.

All questions related to this solicitation must be submitted in writing (via email) to the following individual – questions submitted via telephone will not be answered:

| Contact Name           | Email Address                        |
|------------------------|--------------------------------------|
| <i>Kimberly Oliver</i> | <i>Kimberly.Oliver@Raleighnc.gov</i> |

## 1.2 Background

The City of Raleigh is the capital of North Carolina and one of the fastest growing areas in the country. A great economy, top educational institutions, and exceptional health care facilities are some of the characteristics that attract people to the triangle area. The mild climate, diverse work force and proximity to Research Triangle Park combine to make Raleigh a great place to live.

Pullen Park is North Carolina’s first public park, and one of the oldest amusement parks in the country. Since its opening in 1887, Pullen Park has been the premiere park destination for citizens in the region as well as guests visiting from afar.

In addition to its historical significance, the park is centrally located just minutes from downtown Raleigh and steps away from North Carolina State University and Dix Park. Pullen Park enjoys constant activity throughout the year, including use of our train, historic carousel, pedal boats, picnic shelters, aquatics center, and more. We welcome approximately one million visitors to the park over the course of the year. Pullen Park also hosts Holiday Express for three weeks in the month of December, with over 42,000 people attending the most recognized and sought after holiday event in the region.

In 2011, the City of Raleigh completed a major renovation of Pullen Park that included the renovation of the café facility, as well as significant grounds and overall site improvements. For the purposes of this RFQ, the café facility to be licensed to the selected operator -

including the climate-controlled building (“Licensed Building”) and appurtenant outdoor seating area for the selected operator’s patrons (“Licensed Outdoor Seating Area”) - is referred to collectively as the “Licensed Area.” A map of the layout of the Licensed Area is attached to this RFQ as Appendix V.

The Licensed Building is approximately 1,988 square feet and will be provided in a warm shell condition with the following City-owned fixtures installed for the operator’s use: one (1) walk-in cooler, one (1) fume exhaust hood, two (2) hand sinks, one (1) food prep sink, one (1) dishwashing sink, and one (1) grease trap interceptor. The café does not have interior seating, but covered seating is available on the outdoor plaza and throughout the park. The Licensed Outdoor Seating Area is approximately 1,950 square feet and will contain at least ten covered tables.

### 1.3 **RFQ Timeline**

Provided below is a list of the anticipated schedule of events related to this solicitation. The City of Raleigh reserves the right to modify and/or adjust the following schedule to meet the needs of the project. All times shown are Eastern Time (ET):

| <b>RFQ Process</b>                          | <b>Date and time</b>   |
|---|--|
| RFQ Date                                    | Monday, May 28, 2026   |
| Pre-Submittal Conference<br>(if required)   | Monday, June 29, 2026, 9:00 am<br>Pullen Park Ticket Office<br>520 Ashe Ave, Raleigh, NC 27606 |
| Deadline for written questions              | Thursday, July 16, 2026  |
| City Response to Questions<br>(anticipated) | Thursday, July 30, 2026  |
| <b>Submittal Due Date and Time</b>          | <b>Monday, August 10, 2026, 5:00 pm EST</b>  |
| Evaluation Meeting<br>(anticipated)         | Friday, September 4, 2026  |
| Interviews<br>(if required)                 | Week of September 21, 2026   |
| Selection Announcement<br>(tentative)       | Thursday, October 1, 2026  |

### 1.4 **Pre-Submittal Conference**

In the event that the City of Raleigh elects to conduct a Pre-Submittal Conference or Site Visit, attendance by prospective proposers is strongly encouraged but is not mandatory. Prospective Proposers are encouraged to submit written questions in advance.

### 1.5 **Questions**

Requests for clarification and questions to this RFQ must be received by the City not later than the date shown above in Section 1.3 RFQ Timeline, for the submittal of written inquiries. The firm's failure to request clarification and submit questions by the date in the RFQ Timeline above shall be considered to constitute the firm's acceptance of all City's terms and conditions and requirements.

The City shall issue addenda reflecting questions and answers to this RFQ, if any, and shall be posted to North Carolina electronic Vendor Portal ([eVP](#)). No information, instruction or advice provided orally or informally by any City personnel, whether made in response to a question or otherwise in connection with this RFQ, shall be considered authoritative or binding.

Respondents shall be entitled to rely *only* on written material contained in an Addendum to this RFQ.

***It is important that all Respondents submitting to this RFQ periodically check [eVP](#) for any Addenda. It is the Respondents' responsibility to ensure that all addenda have been reviewed and, if required, signed and returned.***

All questions related to this solicitation must be submitted in writing (via email) to the following individual – questions submitted via telephone will not be answered:

| Contact Name    | Email Address                 |
|-----------------|-------------------------------|
| Kimberly Oliver | Kimberly.Oliver@Raleighnc.gov |

**1.6 Submittal Requirements and Contact Information**

Submittals must follow the format as defined in Section 2 Qualifications Package and be addressed and submitted as follows:

| <b><u>DELIVERED BY US POSTAL SERVICE MAIL:</u></b>  | <b><u>DELIVERED BY OTHER DEIVERY SERVICES:</u></b>  |
|---|---|
| City of Raleigh<br>ATTN: Troy Burton<br>520 Ashe Avenue<br>Raleigh, NC 27606<br>RFQ No. 274-1-PULLCAFE-2026 | City of Raleigh<br>ATTN: Troy Burton<br>520 Ashe Avenue<br>Raleigh, NC 27606<br>RFQ No. 274-1-PULLCAFE-2026 |

Submittals must be enclosed in a sealed envelope or package and clearly marked with the name of the submitting company, the *RFQ number* and the *RFQ Title*, and must include:

- A. one (1) signed hard-copy original submittal package;
- B. one (1) electronic version of the signed submittal;
- C. and three (3) hard copies of the signed submittal.

The electronic version of the Proposal must be submitted as a viewable and printable Adobe Portable Document File (PDF) on a flash drive. Both hard copy and electronic versions must be received by the City on or before the RFQ date and time provided in Section 1.3 RFQ Timeline. Proposals received after the RFQ deadline above will not be considered and will be returned unopened to the return address provided on the submission envelope.

**Proposers must respond to the entire Request for Qualifications (RFQ). Any incomplete submittal may be eliminated from competition at the discretion of the City of Raleigh.** The City reserves the right to reject any or all submittals for any reason and to waive any informality it deems in its best interest.

Submittals that arrive after the due date and time will not be accepted or considered for any reason whatsoever. If the Firm elects to mail in its response, the Firm must allow sufficient time to ensure the City's proper receipt of the package by the time specified in Section 1.3 RFQ Timeline. Regardless of the delivery method, it is the responsibility of the Firm to ensure that

their response arrives at the designated location specified in this Section 1.6 by the due date and time specified in Section 1.3 RFQ Timeline.

### **1.7 Business Engagement and Opportunities**

The City of Raleigh maintains processes to conduct business with all business enterprises, including small, emerging, growing, under-capitalized, and under-resourced firms or organizations.

### **1.8 Rights to Submitted Material**

All qualification packages and supporting materials, as well as correspondences relating to this RFQ, shall become the property of the City. The content of all submittals will be held confidential until the selection of the firm is made. Qualifications will be reviewed by the Evaluation Team, as well as other City staff and members of the general public who submit public record requests. ***Any proprietary data must be clearly marked.*** In submitting qualifications, each submitting firm/company agrees that the City may reveal any trade secret materials contained in such submittal to all City staff and City officials involved in the selection process and to any outside consultant or other third party who serves on the Evaluation Team or who is hired by the City to assist in the selection process. Qualification submittals marked entirely as “confidential”, “proprietary”, or “trade secret” will be considered non-responsive and will be removed from the evaluation process.

### **1.9 Communications**

All communications of any nature regarding this RFQ with any City staff, elected City officials, evaluation committee members are strictly forbidden from the time the solicitation is publicly posted until award. Questions must be submitted in writing to the individual designated in Section 1.1 Purpose, prior to the deadline provided in Section 1.3 RFQ Timeline. Violation of this provision may result in the firm’s proposal being removed from consideration.

### **1.10 Lobbying**

By responding to this solicitation, the firm certifies that it has not and will not pay any person or firm to influence or attempt to influence an officer or employee of the City or the State of North Carolina, or any elected official in connection with obtaining a contract as a result of this RFQ.

### **1.11 Conflicts of Interest**

City of Raleigh contracts are controlled by three conflict of interest provisions.

- (1) First, federal procurement standards provided in 2 CFR 200.318 (c)(1) state:

No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts.

- (2) Similarly, the North Carolina General Statutes provides a *criminal* statute for conflicts of interest in public contracting, N.C.G.S. § 14-234(a) states:

- (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.
  - (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.
  - (3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.
- (3) City of Raleigh Charter Section 3.9 regulates private transactions between the City and its officials and employees, the charter states:

No member of the City Council, official, or employee of the City of Raleigh shall be financially interested, or have any personal beneficial interest, either directly or indirectly, as agent, representative, or otherwise, in the purchase of, or contract for, or in furnishing any materials, equipment or supplies to the City of Raleigh, nor shall any official or employee of the City of Raleigh accept or receive, or agree to accept or receive, directly or indirectly, from any person, firm or corporation to whom any contract may be awarded or from whom any materials, equipment or supplies may be purchased by the City of Raleigh, by rebate, gift, or otherwise, any money or anything of value whatsoever, or any promise, obligation or contract for future reward or compensation, for recommending or procuring the uses of any such materials, equipment or supplies by the City of Raleigh; no member of the City Council, official or employee of the City of Raleigh shall for his own personal benefit operate, directly or indirectly, any concession in any building or on any lands of the City of Raleigh, nor shall any official or employee of the City of Raleigh bid for or be awarded any contract granting concessionary rights of any nature or kind from the City of Raleigh; it shall be unlawful for any member of the City Council, official or employee of the City of Raleigh to bid for or to purchase or to contract to purchase from the City of Raleigh any real estate, equipment, materials, or supplies of any nature or kind whatsoever, either directly or indirectly, at either public or private sale, either singly, or through or jointly with any other person.

### **1.12 Proposer Expenses**

The City of Raleigh will not be responsible for any expenses incurred by any Firm in the development of a response to this Request for Qualifications or any other activities associated with this procurement including but not limited to any onsite (or otherwise) interviews and/or presentations, and/or supplemental information provided, submitted, or given to City of Raleigh and/or its representatives. Further, the City of Raleigh shall reserve the right to cancel the work described herein prior to issuance and acceptance of any contractual agreement/purchase order by the recommended Firm even if the awarding authority for each entity has formally accepted a recommendation.

### **1.13 Proposer Acceptance**

Submission of any proposal indicates a Proposer's acceptance of the conditions contained in this RFQ. The City of Raleigh has the sole discretion and reserves the right to cancel this RFQ, and to reject any and all submittals, to waive any and all informalities and/or irregularities, if it is deemed to be in the City's best interests to do so.

The City of Raleigh reserves the right to accept or reject any or all of the items in any proposal, and to award the contract in whole or in part and/or negotiate any or all items with individual firms if it is deemed in the City's best interest. Moreover, the City reserves the right to make no selection if the submittals are deemed to be outside the fiscal constraint or not in the best interest of the City.

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## **2 QUALIFICATIONS PACKAGE**

Submittal responses must follow the format outlined below. The City may reject as non-responsive at its sole discretion any submittal that does not provide complete and/or adequate responses or departs in any substantial way from the required format.

### **2.1 Request for Qualifications Required Document Format**

Responses should be divided using tabs to separate each section, listed sequentially as follows:

#### **Tab 1: Cover Letter**

Provide an introduction letter summarizing the unique qualifications of your firm to meet the needs of this project. This letter should be presented on the firm's official letterhead and signed by an authorized representative who has the authority to enter into a contract with the City on behalf of the firm. Include the name, address, telephone and email address of the individual who serves as the point of contact for this solicitation.

#### **Tab 2: Corporate Background and Experience**

Include background information on the firm and provide detailed information regarding the firm's experience with similar projects. Provide a list of all similar contracts related experience performed in the past ten (10) number of years, accompanied by at least three (3) references (contact persons, firm, telephone number and email address).

Include the total amount invoiced for each listed project, the length of the project, and list of personnel involved in the project who are also proposed for the subject project named in this solicitation. Failure to provide a list of all similar contracts in the specified period may result in the rejection of the firm's proposal. The evaluation team reserves the right to contact any or all listed references, and to contact other public entities regarding past performance on similar projects.

#### **Tab 3: Financial Information**

Review and provide one of the following three (3) financial statement options:

1. Recent audited or reviewed financial statements prepared by an independent certified public accountant (CPA) that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement) and cash flow statement **and**, if the audited or reviewed financial statements were prepared more than six (6) months prior to the issuance of this RFQ, the Proposer shall submit its most recent internal financial statements (balance sheet, income statement and cash flow statement or budget with entries reflecting revenues and expenditures from the date of the audited

or reviewed financial statements to the end of the most recent financial reporting period (i.e., the quarter or month preceding the issuance date of this RFQ).

OR

2. Recent compiled financial statements prepared by an independent CPA that shall include, at a minimum, a balance sheet, income statement (i.e., profit/loss statement) and cash flow statement **and**, if the compiled financial statements were prepared more than three (3) months prior to the issuance of this RFQ, the Proposer shall submit its most recent internal financial statements (balance sheet, income statement and cash flow statement or budget with entries reflecting revenues and expenditures to date), and other evidence of financial stability such as most recently filed income tax return, evidence of a line of credit/loans/other type of financing with statement of amount in use/outstanding balance (e.g., a complete copy commitment letter, loan agreement, billing statement reflecting the line of credit or statement from lender acknowledging the commitment to fund the Proposer's stated financing), personal guaranty with copies of personal income tax filing and statement of net worth or such other evidence that is accurate, reliable and trustworthy regarding the Proposer's financial stability.

OR

3. Include a certified, signed statement from a licensed CPA regularly engaged in the review of the firm's financial information verifying the financial viability of the firm.

All financial information, statements and/or documents provided in response to this solicitation shall be kept confidential provided that EACH PAGE is marked as follows: "CONFIDENTIAL – DO NOT DISCLOSE EXCEPT FOR THE EXPRESS PURPOSE OF PROPOSAL EVALUATION."

**"Recent"** shall be defined as financial statements that were prepared within the 12 months preceding the issuance date of this RFQ.

**Consolidated financial statements** of the Proposer's parent or related corporation/business entity will not be considered, unless: (1) the Proposer's actual financial performance for the designated period is separately identified in and/or attached to the consolidated statements; (2) the parent or related corporation/business entity provides the State with a document wherein the parent or related corporation/business entity will be financially responsible for the Proposer's performance of the contract and the consolidated statement demonstrates the parent or related corporation's/business entity's financial ability to perform the contract, financial stability and/or such other financial considerations identified in the evaluation criteria; and/or (3) Proposer provides its own internally prepared financial statements and such other evidence of its own financial stability identified above.

The firm's failure to provide any of the above-referenced financial statements may result in the proposal being removed from consideration. Proposers are also encouraged to explain any negative financial information, and to provide documentation supporting those explanations and demonstrating the financial strength of the firm.

**Tab 4: Project Understanding, Approach and Schedule**

Provide a comprehensive narrative, outline, and/or graph demonstrating the firm's understanding and approach to accomplishing the tasks outlined in the Scope of Work section of this RFQ. A description of each task and deliverable and the schedule for accomplishing each shall be included.

**Tab 5: Team Firm, Experience and Certifications/Qualifications**

This section must include the proposed staffing, deployment and firm of personnel to be assigned to this project. The Proposer shall provide information as to the qualifications and experience of all executive, managerial, legal, and professional personnel to be assigned to this project, including resumes citing experience with similar projects and the responsibilities to be assigned to each person. A project-specific firm chart which clearly illustrates the roles, responsibilities, and the reporting relationships of each team member should be included.

**2.2 Hourly Rates**

This solicitation is being issued in accordance with [NC G.S. Chapter 143 Article 3D](#) (Procurement of Architectural, Engineering, and Surveying Services), otherwise known as the Mini-Brooks Act, and therefore price cannot and will not be a determining factor in the selection of the successful service provider. One copy of the Hourly Rate Schedule (see Appendix I) for all proposed project personnel should be enclosed in a separate, sealed envelope.

**2.3 Qualifications Package Documents**

This RFQ is comprised of the base RFQ document, any attachments, and any addenda released before Contract award. All attachments and addenda released for this RFQ in advance of any Contract award are incorporated herein by reference.

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**3 SUBMITTAL EVALUATION**

**3.1 Evaluation Criteria**

This is not a bid. There will not be a public opening. A selection panel will review all proposals comprehensively to identify the most qualified proposal. Submittals will be evaluated based on criteria including the firm's experience, proposed concept and/or menu, proposed product selection and/or pricing, and proposed operations plan. Specific consideration will be given to proposals that show an understanding of food service needs in similar park settings. Specific consideration will also be given to proposals that indicate an appreciation for the history of Pullen Park.

**3.2 Final Selection**

Qualifications will be reviewed after opening and will be ranked in order of choice, at which point contract negotiations will begin with the most qualified firm. If negotiations are unsuccessful, the City will then pursue negotiations with the next most qualified firm. The City shall not be bound or in any way obligated until both parties have signed a contract. The City also reserves the right to delay the award of a contract or to not award a contract.

### 3.3 Contract Term

The contract issued by the City to the selected firm will state and define a completion date by which the services are to be finished and completed.

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## 4 SCOPE OF SERVICES

Awarded firm shall provide services, all as set forth in this RFQ and more particularly described in this Section 4.

The Café operation is a key component to the overall character of the park. The selected proposer will be required to satisfy the following conditions as a part of the concession operations:

### 1) Personnel

The operator will be responsible for hiring the necessary personnel to conduct the daily operation of the café as a family- and child-friendly environment. The selected operator will be required to complete background checks on all operator employees and make the results of those background checks available to the City upon request. The Firm will comply with all federal, state, and local laws related to the employment of persons and the operation of a food service establishment, including but not limited to laws concerning: minimum wage, social security, nondiscrimination, ADA, unemployment compensation, and workers' compensation. Operator employees shall wear a uniform and/or identification badge and deliver the highest level of customer service to all patrons.

State and local regulations regarding food preparation and food handling will also be followed by all employees without fail. Any deficiencies or health code violations as noted by health inspectors may, at the discretion of the City, serve as grounds for immediate termination of the concession License Agreement.

### 2) Operating Hours

Pullen Park is open to the public daily from 7am-9pm ("Park Operating Hours"). The park amusements' "Staffed Hours" vary seasonally.

The operator should propose a regular schedule that at a minimum meets the Staffed Hours. A sample schedule of past amusement hours of operation is included below:

|             | Jan      | Feb      | March    | April    | May      | June     | July     | Aug      | Sept     | Oct      | Nov      | Dec      |
|-------------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|----------|
| <b>Mon.</b> | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm |
| <b>Tue.</b> | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm |
| <b>Wed.</b> | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm |
| <b>Thu.</b> | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm | 10am-6pm |
| <b>Fri.</b> | 10am-6pm | 10am-6pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-6pm |
| <b>Sat.</b> | 10am-6pm | 10am-6pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-8pm | 10am-6pm |

The operator will be expected to be open for patrons during the hours agreed upon with the City. The City will make every effort to negotiate a schedule of hours that is reasonable for both parties.

For approximately three weeks during the month of December, Pullen Park traditionally hosts the Holiday Express event. The amusements will be closed during the day during this time, but the café will be offered an opportunity to provide food service during the evening event.

Should the operator fail to operate the café during the hours agreed to in the resulting license agreement, the City reserves the right to revoke the agreement at any time and enter into negotiations with another operator.

City staff opens/closes and cleans the restrooms during the park's Staffed Hours. Should the selected operator wish to open before or close after Staffed Hours, the operator would be responsible for opening and/or closing the restrooms. The operator would also be responsible for maintaining the restrooms during these times. This includes ensuring that the restrooms are cleaned in a manner agreed upon by PRCR staff.

**3) Menu Items**

Proposals should include your food concept with a sample menu, products, and proposed price list. The selected operator will be expected to serve quality food and drinks to meet the needs of the visiting public. Menu items should be offered at prices which are competitive compared to other food service options in the area. Proposals are strongly encouraged to include menus that offer a variety of healthy choice options for food and beverages. This includes the availability of fresh fruits and fresh vegetables (locally-grown encouraged), bottled water, 100% juice, etc.

Alcoholic beverage sales of non-fortified spirits (beer and wine) may be offered in responding to this RFQ. The operator will be responsible for obtaining their own ABC permitting and for full compliance with the terms of the permit and North Carolina law regarding the sales of alcohol for on-premises consumption.

The operator will be required to carry all applicable insurance and liability for food and beverage service, including sales of beer and/or wine if the operator chooses to serve beer or wine.

The vendor shall provide a discounted staff meal option (Entrée/Drink/Side) each day.

**4) Operations**

The operator should provide a description of the proposed plan for the daily operation of the concession, including the roles of employees, opening and closing procedures, how employees interact with patrons, and how food products are ultimately provided to customers.

The selected operator shall be required to have the ability to accept cash, Visa™, Mastercard™, American Express™, and debit card payments from patrons (customers) including use of point of sale (“POS”) terminals.

The selected operator understands that during a limited number of special events and programs, the City may provide advance notice that they require the use of the patio outside the café. During this time, the City will relocate café tables within reasonable distance of the café. The City will be responsible for this space during these times.

The selected operator will be responsible for maintaining the Licensed Building, including daily janitorial services, garbage removal, pest control, and other related cleaning responsibilities, including cooking surfaces, hoods, and suppression equipment necessary for operations. The operator will be responsible for maintaining the cleanliness of the Licensed Outdoor Seating Area, including tables and patio area. A list of Service Obligations is attached to this RFQ as Appendix VI.

All proposed operational plans should include a detailed description of environmentally friendly practices planned for the café. Welcomed practices may include, but are not limited to, the installation of ENERGY STAR appliances, the employment of energy efficient and water conservation measures, the use of low-toxicity chemicals, the use of “Green Seal” eco-friendly products, and use of biodegradable/compostable or recyclable disposable food service ware.

Operators should define the market for the services proposed and describe how they intend to serve them satisfactorily. This should include identifying relevant and exemplary models at similarly situated parks and children’s museums.

## **5) Regulations and Code Compliance**

The selected operator shall comply with all federal, state, and local rules and regulations regarding food handling, operation of a concession business, and any other laws that would apply to operating a similar type of business. Special attention should be paid to the regulations outlined by the State of North Carolina, Department of Environment and Natural Resources, Division of Environmental Health.

The selected operator will also ensure that all facilities meet or exceed public health standards, and cleanliness standards approved by the PRCR Director or designated representative. The Firm should include a description of its understanding of the importance and method of complying with laws, rules, and regulations applicable to food service, including the provision of beer/wine if the operator so chooses.

## **6) Site History**

Pullen Park dates to 1887 and is the oldest public park in North Carolina and one of the oldest public parks in the world. Café concepts that speak to the park’s history and/or our mission are encouraged.

## **7) Equipment**

It will be the responsibility of the selected operator to provide any equipment necessary to prepare and operate the café space. The City will provide one (1) walk-in cooler, one (1) fume exhaust hood, two (2) hand sinks, one (1) food prep sink, one (1) dishwashing sink, and one (1) grease trap interceptor. The City will provide ample outlets for equipment and will cover some utilities associated with the operation of the café, including sewer/septic, water, electric, and gas. The selected operator will be responsible for telephone/data/network/cable TV. See list of Service Obligations attached to this RFQ as Appendix VI.

The City will make reasonable repairs to the infrastructure of the Licensed Area and any equipment provided by the City. Equipment purchased by the City will remain the property of the City at the conclusion of the license agreement. Any additional improvements to the Licensed Area by the selected operator, to include appliances, shelving attached to the walls, painting, bulletin boards, light fixtures, or any other permanent or semi-permanent additions, will need to be approved by the Parks, Recreation, and Cultural Resources Department prior to installation. The City will provide a reasonable upfit allowance to the selected operator.

## **8) Signage**

Operator shall not erect, construct, install, or place any signs, banners, ads, or displays (hereinafter collectively, "Signage") of any kind whatsoever upon any exterior portion of the Building or Licensed Space without prior written approval from City. Any such Signage shall comply with all local ordinances, restrictive covenants, and/or any governmental laws, rules, and regulations affecting the Licensed Space. All costs associated with the maintenance or removal of such Signage shall be at the Operator's sole cost and expense.

## **9) Terms**

The City will award this license agreement to the operator with the selected proposal for five years with the option for two renewals: to renew for a sixth and seventh year, and an eighth and ninth year.

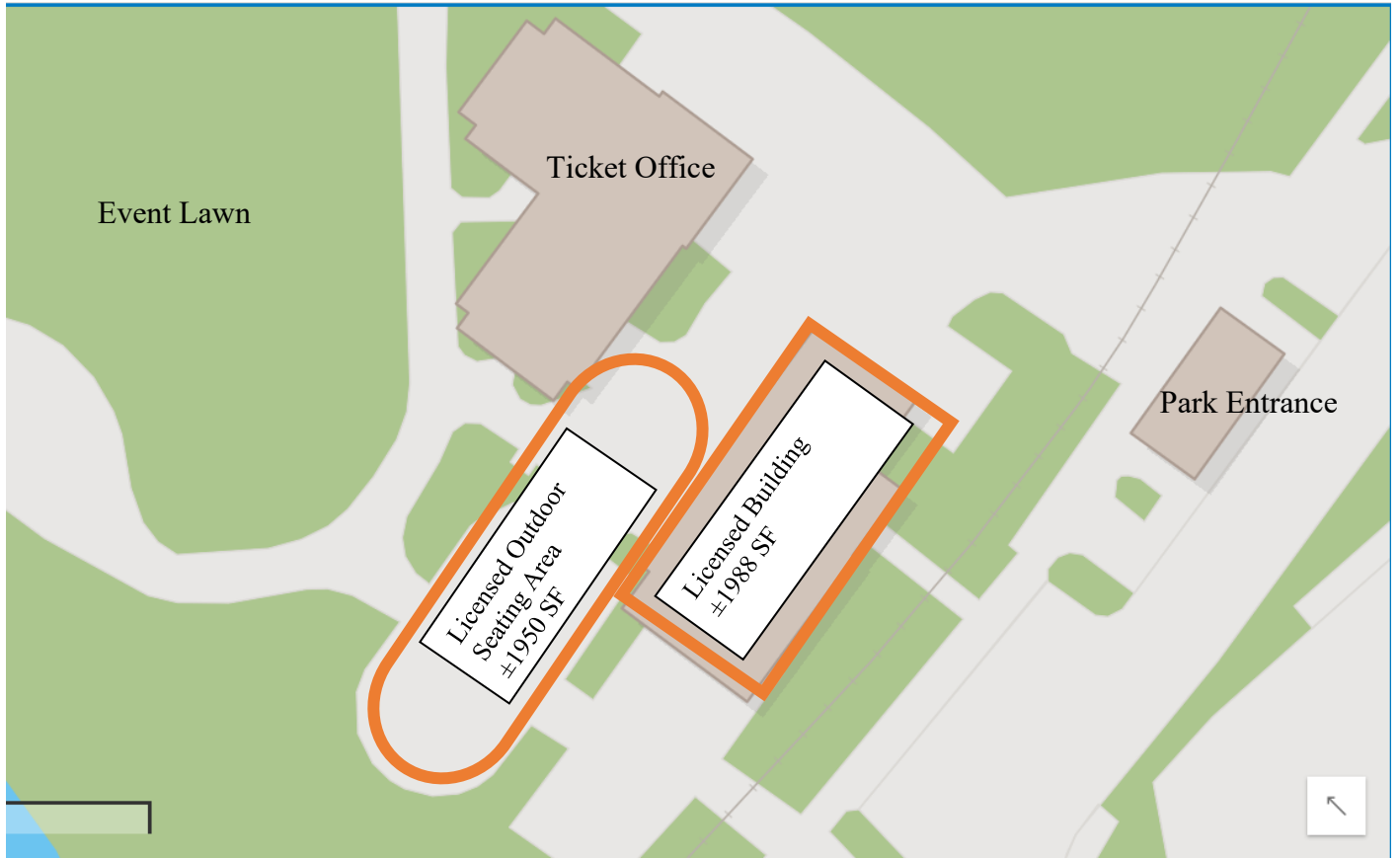
The operator that is awarded the license agreement will need to pay a monthly license fee as determined by the City for the right to exercise the license. The license fee for a month is due by the 5th of that month.

The operator that is awarded the café concession license agreement will have exclusive use of the Licensed Building and will be the exclusive "brick and mortar" provider of food and beverage service in the park, except as provided by vendors participating in special events that occur within the park. The City reserves the right to operate concession operations with city staff, volunteers, and/or additional vendors including food trucks for certain events, as deemed appropriate by City staff.



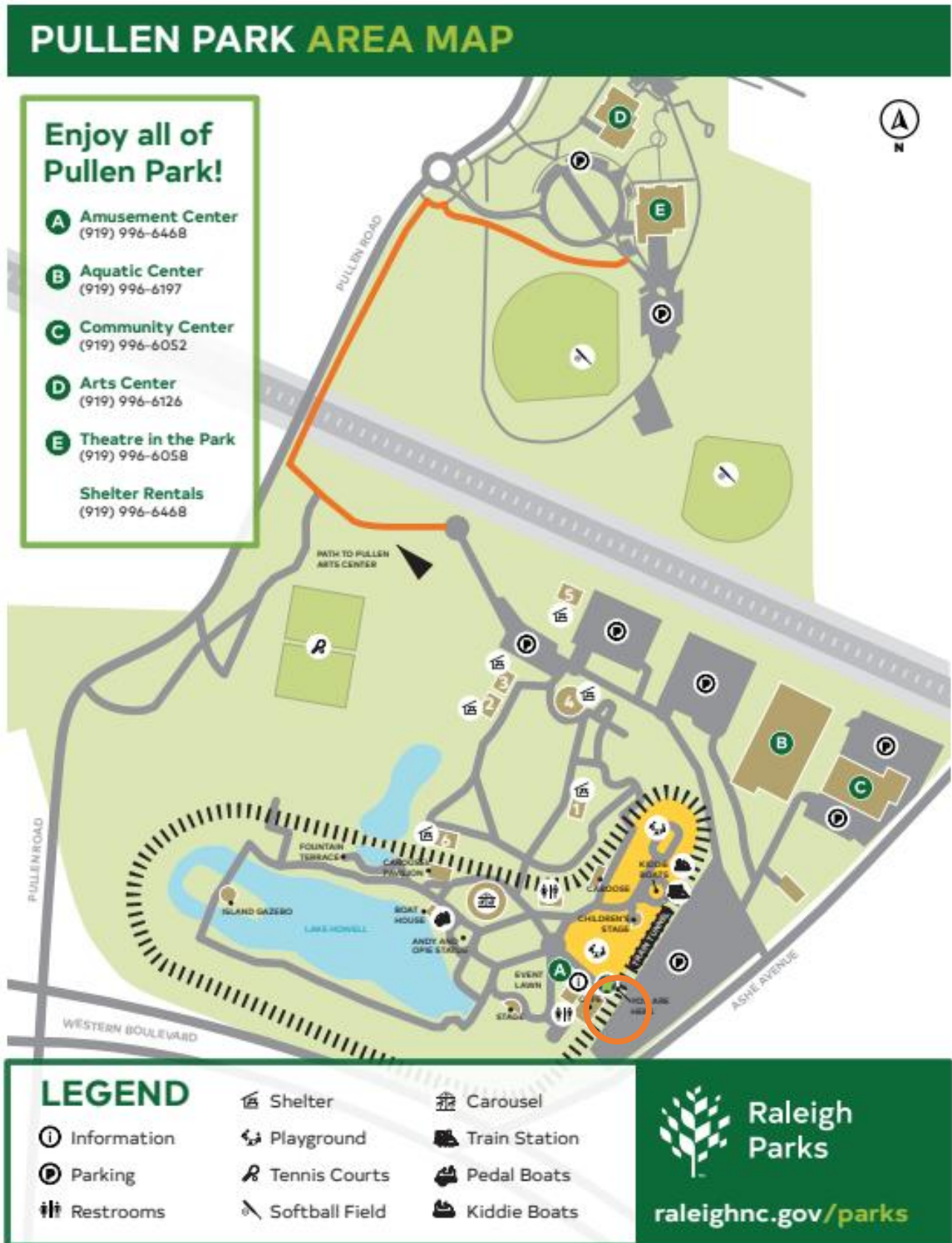
## APPENDIX V

### MAP OF LICENSED AREA



# APPENDIX V

## MAP OF PULLEN PARK



## APPENDIX II PROPOSER QUESTIONNAIRE

The following questions must be answered, and data given must be clear and comprehensive. If necessary, questions may be answered on separate sheets. The Proposer may submit any additional information desired.

|   |          |                       |      |
|---|----------|-----------------------|------|
| Company Name:   |          | d/b/a (if applicable) |      |
| Street / PO Box:  |          |                       |      |
| City:   |          | State:                | Zip: |
| Phone:  | Fax:     | E-Mail:               |      |
| Website (if applicable):  |          |                       |      |
| <input type="checkbox"/> Sole Proprietor <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Other   |          |                       |      |
| Number of years in business under company's present name:   |          |                       |      |
| Fed Tax ID #:   |          | DUNS #                |      |
| Are you registered with the North Carolina Secretary of State to conduct business (if required)? (Check One) YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/>  |          |                       |      |
| Are you properly licensed/certified by the Federal and/or State of North Carolina to perform the specified work?<br>YES: <input type="checkbox"/> NO: <input type="checkbox"/> Not Applicable: <input type="checkbox"/> ATTACH COPY OF ALL APPLICABLE LICENSING/CERTIFICATION DOCUMENTS   |          |                       |      |
| Are/will you be properly insured to perform the work? YES: <input type="checkbox"/> NO: <input type="checkbox"/>  |          |                       |      |
| Contact for this Contract:  |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Have you ever defaulted or failed on a contract? (If yes, attach details) YES: <input type="checkbox"/> NO: <input type="checkbox"/>  |          |                       |      |
| List at least three (3) references for which you have provided these services (same scope/size) in the past three years - preferably government agencies. Do not include City of Raleigh as a reference to meet the requirement of listing at least (3) references.<br><b>PROPOSERS ARE RESPONSIBLE FOR SENDING REFERENCE QUESTIONNAIRE (APPENDIX III) TO THEIR REFERENCES.</b> |          |                       |      |
| 1.  | Company: |                       |      |
| Contact Person:   |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Describe Scope of Work:   |          |                       |      |
| 2.  | Company: |                       |      |
| Contact Person:   |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Describe Scope of Work:   |          |                       |      |
| 3.  | Company: |                       |      |
| Contact Person:   |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Describe Scope of Work:   |          |                       |      |
| 4.  | Company: |                       |      |
| Contact Person:   |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Describe Scope of Work:   |          |                       |      |
| 5.  | Company: |                       |      |
| Contact Person:   |          | Title:                |      |
| Phone:  | Fax:     | E-Mail:               |      |
| Describe Scope of Work:   |          |                       |      |
| The undersigned swears to the truth and accuracy of all statements and answers contained herein:  |          |                       |      |
| Authorized Signature:   |          | Date:                 |      |

**APPENDIX III**  
**REFERENCE QUESTIONNAIRE**  
**(Instructions)**

***1-PULLCAFE-2026***  
***Pullen Park Café Operation***

The City of Raleigh, as a part of the RFQ, requires proposing companies to submit a minimum of three (3) business references as required within this document. The purpose of the references is to document the experience of the proposer relevant to the scope of services and assist in the evaluation process.

- The Proposer is required to send the reference form (the following two pages) to each business reference listed on Proposer Questionnaire.
- The business reference, in turn, is requested to submit the Reference Form directly to the City of Raleigh Point of Contact identified on the Reference Questionnaire form for inclusion in the evaluation process.
- The form and information provided will become a part of the submitted proposal. The business reference may be contacted for validation of the response.
- It is the Proposer's responsibility to verify their references have been received by the City of Raleigh Point of Contact by the date indicated on the reference form.

**APPENDIX III**  
**REFERENCE QUESTIONNAIRE FORM**

**1-PULLCAFE-2026**  
**Pullen Park Café Operation**

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**(Name of Business Requesting Reference)**

This form is being submitted to your company for completion as a business reference for the company listed above.

This form is to be returned to the City of Raleigh, Kimberly Oliver, via email to [Kimberly.oliver@raleighnc.gov](mailto:Kimberly.oliver@raleighnc.gov) no later than **5 p.m. ET, August 10, 2026** and **MUST NOT** be returned to the company requesting the reference.

For questions or concerns regarding this form, please contact the City of Raleigh, Point of Contact above.

**Company Providing Reference**

**Contact Name and Title/Position**

**Contact Telephone Number**

**Contact Email Address**

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Questions:

1. In what capacity have you worked with this company in the past? If the company was under a contract, please acknowledge and explain briefly whether or not the contract was successful.

Comments:

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

3= Excellent

2= Satisfactory

1= Unsatisfactory

0= Unacceptable

Comments:

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3. How would you rate the company's flexibility relative to changes in the scope and timelines?

3= Excellent

2= Satisfactory

1= Unsatisfactory

0= Unacceptable

Comments:

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4. What is your level of satisfaction with hard-copy materials, e.g. reports, logs, etc. produced by the company?

3= Excellent

2= Satisfactory

1= Unsatisfactory

0= Unacceptable

Comments:

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5. How would you rate the dynamics/interaction between the company and your staff?  
 3= Excellent     2= Satisfactory     1= Unsatisfactory     0= Unacceptable

Comments:

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6. Who were the company's principle representatives involved in providing your service and how would you rate them individually? Would you comment on the skills, knowledge, behaviors or other factors on which you based the rating?  
(3= Excellent; 2= Satisfactory; 1= Unsatisfactory; 0= Unacceptable)

|             |               |
|-------------|---------------|
| Name: _____ | Rating: _____ |
| Name: _____ | Rating: _____ |
| Name: _____ | Rating: _____ |
| Name: _____ | Rating: _____ |

Comments:

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

Comments:

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

Comments:

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

Comments:

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**APPENDIX IV**  
**SAMPLE CONTRACT**

**STATE OF NORTH CAROLINA**  
**COUNTY OF WAKE**

**CONCESSIONAIRE LICENSE AGREEMENT**

This **CONCESSIONAIRE LICENSE AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”) by and between the City of Raleigh, a North Carolina municipal corporation, hereinafter referred to as the “City” and \_\_\_\_\_, a North Carolina incorporated company, hereinafter referred to as “Licensee.” The City and Licensee are hereinafter referred to individually as a “Party” or collectively as the “Parties.”

**RECITALS:**

**WHEREAS**, the State of North Carolina (“State”) owns that certain parcel or tract of land situated in the City of Raleigh, Raleigh Township, Wake County, North Carolina, consisting of approximately four acres bounded on the north by E. Hargett Street, on the east by S. Person Street, on the south by E. Martin Street, on the west by S. Blount Street, and being all of the lots identified as 110, 111, 126 and 127 on the plan of the City of Raleigh adopted in 1792 and commonly being known as “Moore Square Site”; and

**WHEREAS**, in May 2011, City adopted the Moore Square Master Plan, which provides for the reconstruction and redevelopment of Moore Square as a modern urban park (“Moore Square”) and contemplates the creation of an area for food and beverage service for patrons of the park; and

**WHEREAS**, pursuant to N.C. Gen. Stat. § 143-345.4, and in furtherance of City’s use of Moore Square for the beneficial use and enjoyment of the public, the State and the City entered into an Easement Agreement dated August 1, 2016, and recorded on September 15, 2016, in Book 16532, Page 504, Wake County Registry, (“Easement Agreement”) which allows the City to construct and maintain certain buildings, structures, amenities, and facilities (“Improvements”) including food vendor kiosks, public lavatories, and public amenities as shown on design plans prepared by the City and approved by the State Construction Office; and

**WHEREAS**, the City desires to engage Licensee to provide food and beverage services pursuant to the terms and provisions of this Agreement.

**NOW, THEREFORE**, in consideration of the recitals, the mutual terms and conditions of this License Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the City and Licensee hereby agree to the following:

**ARTICLE I**  
**DEFINITIONS / EXHIBITS**

1.0 **Definitions.** In addition to the defined terms set forth elsewhere in this Agreement, unless the context otherwise requires, the following terms used in this Agreement as indicated by their initial capitalization shall be defined as follows:

- a) “Moore Square Site” means that certain parcel or tract of land situated in the City of Raleigh, Raleigh Township, Wake County, North Carolina, consisting of approximately four acres bounded on the north by E. Hargett Street, on the east by S. Person Street, on the south by E. Martin Street, on the west by S. Blount Street, and being all of the lots identified as 110, 111, 126 and 127 on the plan of the City of Raleigh adopted in 1792, and as described on the map attached hereto as “**Exhibit A**,” which is incorporated herein by reference.
- b) “Master License” means the statutory license granted by the State to the City for use of Moore Square as set forth under N.C. Gen. Stat. §143-345.4.
- c) “Moore Square” means the proposed development of Moore Square as adopted in the City’s Moore Square Master Plan.
- d) “Moore Square Easement” means the easement area described in the Easement Agreement between the State and the City dated August 1, 2016, and recorded on September 15, 2016, in Book 16532, Page 504, Wake County Registry, and as described as the “Easement” on the map attached hereto as “**Exhibit A**”.
- e) “Moore Square Director” means the person authorized by the Director of Parks, Recreation, and Cultural Resources to manage the operations of Moore Square, including the administration of this Agreement.
- f) “Improvements” means those buildings, structures, amenities, and facilities permitted within the Moore Square Easement area pursuant to Easement Agreement.
- g) “Building” shall mean the Moore Square Pavilion Building located at 200 South Blount Street, Raleigh, NC 27601, as described on the map attached hereto as “**Exhibit B**”.
- h) “Common Areas” shall mean those portions of the Building comprising the bathrooms, trash room, and recycling area.
- i) “Outdoor Seating Area” shall mean the outdoor seating area space as described on the map attached hereto as “**Exhibit B**”.
- j) “Licensed Building Space” means that portion of the Building that is to be licensed to Licensee pursuant to this Agreement, as described on the map and floor plan attached hereto as “**Exhibit C**”.
- k) “Licensed Outdoor Seating Area Space” means that portion of the Outdoor Seating Area that is to be licensed to Licensee pursuant to this Agreement, as described on the map attached hereto as “**Exhibit D**”.
- l) “Licensed Space” means the area encompassing the Licensed Building Space and the Licensed Outdoor Seating Area Space.

- m) “Café” means the food and beverages concessions to be operated by Licensee on or within the Licensed Space.
- n) “Café License” means the license granted herein by the City to the Licensee for purposes set forth in this Agreement.
- o) “Park Operating Hours” means the hours of the day when Moore Square will be open to the public for regular park operations. Unless modified at the sole discretion of the Raleigh City Council, the Park Operating Hours are posted as **6am to 11pm, Monday through Sunday**.
- p) “Park Staffed Hours” means the hours of the day when Moore Square staff are on duty and present in the park. City-provided private security and restroom custodial services occur during Park Staffed Hours. Park Staffed Hours are seasonal, 10am to 8pm (“summer hours”) and 10am to 6pm (“winter hours”).
- q) “Café Operating Hours” means the hours of the day when the Café will be open for regular Café operations as determined by Licensee, subject to approval by the Moore Square Director, not to be unreasonably withheld, conditioned or delayed. **The Café Operating Hours shall not exceed Park Operating Hours**.

#### 1.1 Incorporation of Recitals and Exhibits.

- a) Incorporation of Recitals. The Recitals set forth herein are hereby incorporated in the Agreement the same extent as if hereinafter fully set forth.
- b) Exhibits. The following exhibits are attached to this Agreement and are made part of this Agreement:
  - a. **Exhibit A** - Description of Moore Square and Moore Square Easement.
  - b. **Exhibit B** - Map of Building and Outdoor Seating Area.
  - c. **Exhibit C** - Map and Floor Plan of Licensed Building Space.
  - d. **Exhibit D** - Map and Floor Plan of Licensed Outdoor Seating Area Space.
  - e. **Exhibit E** - Café Building Floor Plan
  - f. **Exhibit F** - Buy-Out Schedule.
  - g. **Exhibit G** - Equipment Costs.
  - h. **Exhibit H** - Start-Up Costs.
  - i. **Exhibit I** - Equipment Inventory Form.

## ARTICLE II TERM

2.1. **Grant of License.** The City hereby authorizes and licenses Licensee to use and maintain the Licensed Space subject to the terms of this Agreement. The Café License is subject to all conditions, covenants, restrictions, easements, and other matters of record that apply to Moore Square, and to all subdivision ordinances, zoning ordinances, land use regulations and other laws, regulations or ordinances applicable to Moore Square.

2.2 **Term.** The Agreement commencement date (“Commencement Date”) shall be the latter of October 15, 2024 or the date upon which the City of Raleigh issues a written notice

to proceed (“NTP”) to the Licensee. The City agrees to provide Licensee with access to Moore Square and the Licensed Space after the Effective Date and prior to the Commencement Date for purposes of installing Licensee’s Personal Property, subject to the terms and conditions contained herein, including but not limited to all applicable insurance requirements. The initial term of this Agreement shall be for a period of five (5) years (the “Initial Term”), commencing on the Commencement Date and terminating five years thereafter, unless the Café License is revoked by the City and this Agreement is terminated prior to the Expiration Date as permitted under Sections 16.1, 16.2, and 16.3 below, or if the Parties mutually agree to renew under Section 2.3 below. Each year of the Term shall be referred to as an “Agreement Year.”

2.3 **Renewal Option.** Provided that the Café License has not been revoked and this Agreement has not been previously terminated, and Licensee is in good standing, the Parties may mutually agree to extend the Agreement for two (2) years (a “Renewal Term”). The Initial Term and Renewal Term, if any, shall collectively be referred to herein as the “Term”. The date at which the Term expires under this Agreement shall be referred to herein as the “Expiration Date.”

**ARTICLE III  
LICENSE FEE AND OPTIONS**

3.1 **License Fee.** Except as set forth herein, the License Fee shall be \$\_\_\_\_\_ per Agreement Year payable in monthly installments on the fifth day of each calendar month in the amount of \$\_\_\_\_\_. The annual amount payable hereunder (and accordingly the monthly installments) shall increase each year by .000% in accordance with the fee schedule below:

|        | Monthly Fee | Total Period Fee |
|--------|-------------|------------------|
| Year 1 | \$          | \$               |
| Year 2 | \$          | \$               |
| Year 3 | \$          | \$               |
| Year 4 | \$          | \$               |
| Year 5 | \$          | \$               |

|                   |    |    |
|-------------------|----|----|
| Renewal<br>Year 1 | \$ | \$ |
| Renewal<br>Year 2 | \$ | \$ |

3.2 **Late Fees.** If City fails to receive the License Fee payment in full within thirty (30) business days after it becomes due, Licensee shall pay City, as an additional fee, a late charge equal to \_\_\_\_\_ percent of the overdue amount, plus any actual bank fees incurred for dishonored License Fee payments.

3.3 **Holdover.** Licensee shall pay to City \_\_\_\_\_ percent of the total of the License Fee, as adjusted, then applicable for each month or portion thereof Licensee shall continue to occupy the Licensed Space after the Expiration Date of this Agreement, whether by lapse of time or otherwise. Any such holding over shall not be deemed to be a renewal of this Agreement but shall be deemed to create a month-to-month revocable license at-will, subject to the provisions set forth under Sections 16.1, 16.2, and 16.3 below. The provisions of this Section 3.3 shall not operate as a waiver by City of any rights or remedies provided in this Agreement.

3.4. **Notices.** Unless otherwise directed in writing, or as applied to regular operational communications, any and all notices, transmissions, and written communications between the parties as required in this Agreement shall be directed as follows:

If intended for the City, addressed to City, at:

CITY: City of Raleigh  
222 West Hargett Street  
Raleigh, North Carolina 27601  
Attn:  
FAX #:  
EMAIL:

With a copy also sent to:

City of Raleigh  
222 West Hargett Street  
Raleigh, North Carolina 27601  
Attn:  
FAX #:  
EMAIL:

City Attorney's Office  
Attn: City Attorney or designee  
One Exchange Plaza, Suite 1020  
Raleigh, North Carolina 27601  
FAX #:  
EMAIL:

If intended for Licensee, addressed to Licensee, at:

LICENSEE: .  
Attn: \_\_\_\_\_, Owner  
FAX#:  
EMAIL:

#### **ARTICLE IV USE AND CONDUCT OF BUSINESS**

4.1 **Permitted Uses.** Licensee agrees that the Licensed Building Space shall be used only as a Café for the preparation and delivery of food, beverages, and related products, and for no other purposes. The Licensed Space is not intended for human habitation or overnight camping. Licensee shall not permit habitation or overnight camping in or upon the Licensed Space or Building. Licensee will have exclusive use of the Licensed Building Space and will be the sole provider of food and beverage services in Moore Square during the Café Operating Hours, except as provided in the following Section. Licensee shall not use the Licensed Space solely for the sale of alcoholic beverages. No use of the Licensed Space will

be made or allowed which is detrimental to Moore Square and its users, to adjacent or neighboring buildings and their occupants, or to users of the public ways in general.

The City reserves the right to operate concession operations outside of the Licensed Building Space by using city staff, volunteers, or additional vendors for certain events as deemed appropriate by City staff. Further, the City reserves the right to employ and/or temporarily place food trucks and/or other food concessions solely in connection with the support of specific events and programs at Moore Square as needed. The City will notify Licensee in writing at least ten (10) business days in advance should portions of the Outdoor Seating Area be needed to support concession operations as permitted herein. The Parties agree to cooperate in the shared use of the Outdoor Seating Area space when such shared use is deemed necessary by the City.

**4.2 Licensed Building Space.** The City will provide the Licensee with an allowance of to support upfit of the Licensed Building Space and associated Licensed Outdoor Seating Area. The allowance includes \_\_\_\_\_ of which the Licensee agrees to match and commit to the purchase of exterior dining furnishings. The Licensee agrees to allow the City to review and approve of the selected exterior dining furnishings prior to purchase. Furnishings purchased with the \_\_\_\_\_ allotment from the City shall be identified on the Equipment Inventory Form attached as **“Exhibit I”** and will be considered property of the City of Raleigh.

Prior to the Commencement Date, the City will complete the following interior alterations requested by the Licensee.

The City will furthermore provide a fume hood, three (3) hand sinks, one (1) three compartment dishwashing sink, and a grease trap interceptor. On the Commencement Date, the Licensed Building Space shall meet all applicable code requirements including health department regulations.

**4.3 Licensed Outdoor Seating Area Space.** Prior to the Commencement Date, the Licensed Outdoor Seating Area Space will be furnished with a minimum of ten (10) tables with seats (“Outdoor Seating Area Equipment”). City will service and maintain such Outdoor Seating Area Equipment, which shall be considered the City’s property. Licensee shall be responsible for cleaning the Outdoor Seating Area Equipment. The Parties acknowledge that the Licensed Outdoor Seating Area Space is intended to be used primarily by Licensee’s patrons during the Café Operating Hours. The portion of the Outdoor Seating Area that is not licensed to Licensee may be used by members of the public, including but not limited to other non-Licensee concession operations and/or food truck patrons.

**4.4 Common Areas.** Licensee and its employees and patrons shall have the non-exclusive right to use the Common Areas during the Term. The City’s custodial staff shall be responsible for cleaning Common Area bathrooms during Park Operating Hours as defined herein.

**4.5 Public Advertising.** Licensee shall not use the existence of this Agreement, or the name of the City of Raleigh, as part of any advertising without the prior written approval of the City.

**4.6 Laws/Safety Standards.** Licensee shall comply with all laws, ordinances, codes, rules, regulations, safety standards and licensing requirements that are applicable to the conduct of its business, including those of Federal, State, and local agencies having jurisdiction and/or authority.

**4.7 Waste and Nuisance.** Unless specified herein as the City's responsibility, Licensee shall in all respects and at all times fully comply with all environmental, health, and policy regulations. Licensee shall not cause or permit any waste to occur in the Licensed Space and shall not overload the floor, or any mechanical, electrical or plumbing or utility systems serving the Building. No hazardous waste, contaminants, or other hazardous materials as those terms are defined under all applicable environmental statutes, laws, regulations, rules or ordinances of all federal, state or local government authorities, have been or will be disposed of by Licensee, or discharged or in any way released unto Moore Square, including the Licensed Space, by Licensee. Licensee shall keep the Licensed Space, and every part thereof, in a clean and wholesome condition, free from any objectionable noises, loud music, odors, or nuisances. Noises and odors associated with the typical operations of a Café shall not be prohibited hereunder.

**4.8 Gas Appliances.** All manufactured items and/or fabricated assemblies subject to operation under pressure, operation by connection to an electric source, or operation involving a connection to a manufactured, natural, or LP gas source shall be constructed and approved in a manner acceptable to the appropriate State inspector. This customarily requires the label or re-examination listing or identification marking of the appropriate safety standard organization, such as the American Society of Mechanical Electrical Engineers for pressure vessels; the Underwriters' Laboratories and/or National Electrical Manufacturers' Association for electrically operated assemblies; or the American Gas Association for gas operated assemblies, where such approvals of listings have been established for the type(s) of devices offered and furnished. Further, all items furnished by Licensee shall meet all requirements of the Occupational Safety and Health Act (OSHA), and state and federal requirements relating to clean air and water pollution. City, in coordination with Licensee, shall be responsible for installing placards on the exterior of the Building in accordance with the National Fire Protection Association (NFPA) rating system.

**4.9 E – Verify.** Licensee shall comply with E-Verify, the federal E-Verify program operated by the United States Department of Homeland Security and other federal agencies, or any successor or equivalent program used to verify the work authorization of newly hired employees pursuant to federal law and as in accordance with N.C. Gen. Stat. §64-25 et seq. In addition, to the best of Licensee's knowledge, any subcontractor employed by Licensee as a part of this Agreement shall be in compliance with the requirements of E-Verify and N.C. Gen. Stat. §64-25 et seq.

**4.10 Gross Receipts, Audit.** Throughout the Term of this Agreement, and upon and in the event of the expiration or other termination of this Agreement, Licensee shall submit to the City, within sixty (60) days (i) of the close of each Agreement Year during the Term, or (ii) of the date of the expiration or other termination of this Agreement, a Gross Receipts report for the Café operations for either (x) the prior twelve (12) month period ending at the conclusion of such Agreement Year, or (y) such shorter period in the event of early expiration or termination of this Agreement. The term "Gross Receipts" shall mean the total amount of money received by Licensee, or any agent, or employee of Licensee for all sales and event service fees, cash or credit, made under this Agreement.

The Gross Receipts report shall be certified by an authorized officer of Licensee. Gross Receipts shall be reported by month and by the following categories –food and beverage; alcoholic drinks; merchandise; and event service fees.

If the City is not satisfied with the certified Gross Receipts report, then the City's Internal Audit Office may conduct a special audit of Licensee's financial records maintained in connection with the operations and services performed under this Agreement. The City or its designee may conduct such special audits throughout the Term of this Agreement and for a period of three years after final payment, or longer if required by law.

The City agrees to provide Licensee with an opportunity to discuss and respond to any findings before a special audit report is issued. The City's rights under this provision shall survive the termination of this Agreement.

## **ARTICLE V CONCESSION SERVICES**

**5.1 Menu and Price Points.** Licensee is expected to serve quality food and drinks to meet the needs of the visiting public. Menu items should be offered at competitive prices. Licensee will carry all applicable insurance and liability for food and beverage, including but not limited to sales of beer and/or wine. Licensee's menu of alcoholic beverages shall be limited to the sale of unfortified beer, wine, and mead only, subject to the permitting requirements set forth in Section 5.6.

**5.2 Personnel.** Licensee will be responsible for hiring the necessary personnel to conduct the daily operation of the Café as a family and child-friendly environment. Background checks will be required for all Licensee employees. Upon written request by the City, Licensee shall provide evidence of completed background checks in a form and manner that is reasonably satisfactory to the City. Licensee will comply with all federal, state, and local laws related to minimum wage, social security, nondiscrimination, ADA, unemployment compensation, and workers' compensation. State and local regulations regarding food preparation and food handling will also be followed by all employees without fail. Licensee employees shall wear a uniform and/or identification badge.

**5.3 Non-discrimination.** To the extent permitted by North Carolina law, the Parties hereto for themselves, their agents, officials, employees and servants agree not to discriminate in any manner on the basis of race, color, creed, national origin, sex, age, handicap, or sexual orientation with reference to the subject matter of this Agreement. The Parties further agree, to the extent permitted by law, to conform with the provisions and intent of City of Raleigh Ordinance 1969-889, as amended. This provision is hereby incorporated into this Agreement for the benefit of the City and its residents, and may be enforced by action for specific performance, injunctive relief, or other remedy as provided by law. This provision shall be binding on the successors and assigns of the Parties with reference to the subject matter of this Agreement.

**5.4 Park Operating Hours.** Moore Square is open to the public Monday through Sunday, 6am to 11pm. **Café Operating Hours shall not exceed Park Operating Hours.** Should Licensee fail to operate the Café during the Café Operating Hours, such failure shall constitute a default subject to the notice and cure provisions of Section 14.1, unless Licensee's failure to operate is due to Moore Square Work and Moore Square Maintenance under Section 6.1 below.

Restrooms are open/cleaned during Park Staffed Hours (10am-8pm "summer hours" and 10am-6pm "winter hours"). Should the Licensee wish to open before or close after Park Staffed Hours, the Licensee would be responsible for opening and/or closing the restrooms,

as well as maintaining the restrooms during these times. This includes ensuring that the restrooms are cleaned in a manner agreed upon by PRCR staff.

**5.5 Operations.** Licensee shall be required to have the ability to accept Visa™, Mastercard™, American Express™, and debit card payments from patrons (customers) including use of point of sale (POS) terminals.

**5.6 Alcohol.** Licensee, at its sole expense, shall be solely responsible for obtaining all permits and licenses required for the sale of alcoholic beverages within the Licensed Space, including but not limited to permits required by the ABC Commission of North Carolina and other City permits or licenses. The carrying, consumption, and delivery and/or pouring of alcoholic beverages on or within any portion of the Licensed Space by or for patrons of the Café or attendees of events at Moore Square, including the Licensed Space, shall comply with all laws, ordinances and regulations governing the sale and consumption of alcohol. The City reserves the right to require Licensee to display signage, as approved by the City in its sole discretion, within the Licensed Space to designate where alcoholic beverages purchased from the Café may be consumed. Notwithstanding anything to the contrary set forth herein, Licensee shall indemnify and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged in connection with the sale of alcohol by Licensee, Licensee's employees, agents, or representatives as permitted under this Agreement. The indemnification obligations contained in this Section 5.6 shall survive the revocation of the Café License and the termination of this Agreement.

**5.7 Special Events and Programs.** Should the City extend Park Operating Hours for special events or programs sponsored by the City ("City Events") then such City Events shall be staffed by the City and Licensee may extend Café Operating Hours during the City Events, subject to approval by the Moore Square Director, not to be unreasonably withheld, conditioned or delayed. The City will market Licensee as the first option for providing catering and food services for special events and programs coordinated by the City.

Licensee may coordinate special events and programs within Moore Square ("Licensee Events") subject to approval by the Moore Square Director. Licensee Events must take place during, and shall not exceed, Park Operating Hours, including extended hours as permitted under Section 5.4 above, which shall be staffed by the City. Unless the Parties agree otherwise by separate written agreement, Licensee shall pay the City a program fee for each Licensee Event in the amount of \$ .

**5.8 Private Events and Catering.** Licensee and City agree that patrons ("Catering Patrons") who wish to host private catered events or programs within Moore Square ("Private Events") will have two (2) options for catering such events. These options are intended to encourage Catering Patrons to employ Licensee's services. These options include:

Option 1: Catering Patrons may use Licensee to cater Private Events. No catering permit fee and/or alcohol permit fee will be required for this option.

Option 2: Catering Patrons may use a catering company other than the Licensee by paying the applicable catering permit fee and/or alcohol permit fee as well as having the Catering Patron's catering company of choice complete and submit all required forms and agree to a Moore Square catering permit, which shall be provided by the Moore Square Director.

This provision does not apply to park patrons who bring food from home or another off-site facility.

**5.9 Regulations and Code Compliance.** Licensee shall comply with all federal, state and local rules and regulations regarding food handling, operation of a concession business, and any other laws that would apply to operating a similar type of business. Licensee will insure that all operations meet or exceed public health standards, and reasonable cleanliness standards approved by the Moore Square Director or his/her designated representative. Any health code violations that result in the issuance of a sanitary grade rating of less than "A" may be grounds for termination of this Agreement as provided in Section 14.1.

**5.10 Designated Parking.** The City will provide two (2) curbside temporary parking spaces to support takeout dining and delivery orders. The City will provide the spaces on a six (6) month trial basis in order to assess need and operational impact. Continued use of the spaces will automatically renew after the trial period provided the satisfaction of both parties, which shall not be unreasonably withheld, conditioned or delayed. The spaces are anticipated to be installed in December 2024.

## **ARTICLE VI MAINTENANCE OF LICENSED SPACE**

**6.1 City's Maintenance Responsibilities.** City, at its sole cost and expense, shall keep the exterior walls, foundation and roof of the Building in good condition. City is solely responsible for repair and replacement of the fume hood, grease trap, sinks, electrical system, fire extinguishers/suppression equipment, and other items owned by City and installed in the Building, including all items installed in accordance with **Exhibit E** (the "City Fixtures"). Unless otherwise provided herein, City's obligations include regular and routine maintenance of City Fixtures as provided by manufacturer recommendations, City ordinances, or industry standards. Further, City, at its sole cost and expense, shall keep the Common Areas in good condition. Licensee agrees to provide City with reasonable access to the Licensed Space for the purpose of performing maintenance, repairs, and property appraisal/inspections.

Licensee shall report any condition of the Building or City's Fixtures requiring maintenance or repair to the City within seventy-two (72) hours of Licensee's notice thereof. In the event Licensee identifies a condition of the Licensed Space or Building or any part thereof which constitutes an immediate safety hazard, Licensee shall take reasonable steps to warn and protect Moore Square visitors, Licensee's employees, and City's employees from such condition until such time as City has initiated action to correct or repair the condition.

Upon receipt of written notice from Licensee of any condition impairing the reasonable utility and/or function of the Building or City's Fixtures, City shall make reasonable efforts to maintain, repair, or replace such condition within a reasonable time. City shall not be liable to Licensee for any indirect or consequential damages arising from the condition, function, or operation of City's Fixtures.

In the event City fails to properly maintain the City's Fixtures, Licensee shall provide written notice to the Moore Square Director or his/her designee to determine the alleged deficiency and specific steps necessary to cure, and the City shall have five (5) business days from receipt of such notice to cure any such maintenance issues. If the City fails to timely cure, Licensee shall be permitted (but not required) to effectuate any maintenance, replacement, or repair to the City's Fixtures as reasonably necessary, at Licensee's cost and expense, and Licensee may charge the City for any and all such cost and expense.

City shall be solely responsible for all maintenance and repairs of the Outdoor Seating Area and tables located within the Outdoor Seating Area, except Licensee shall be responsible for cleaning the Outside Seating Area equipment. City shall take all reasonable efforts to ensure that the Outdoor Seating Area and tables are maintained in such a fashion that the area will promote and not inhibit Café operations.

City shall also be responsible for the security of the Outdoor Seating Area as determined by the City in its sole discretion.

City and Licensee recognize that the City may in the future renovate and improve Moore Square, including the replacement of paving materials and other amenities (such renovation or improvement work hereinafter referred to as “Moore Square Work”). City and Licensee further recognize that the City in the future will have maintenance work to perform on Moore Square (such maintenance work hereinafter referred to as “Moore Square Maintenance”). The City will use its best efforts to minimize disruption to the Licensee’s use of the Licensed Space during Moore Square Work and Moore Square Maintenance, including coordinating Moore Square Maintenance with Licensee so that Licensee can continue to use the Licensed Space during Café Operation Hours while Moore Square Maintenance is on-going.

Notwithstanding the foregoing, the Parties acknowledge that some Moore Square Work and Moore Square Maintenance may require the Licensed Space to be temporarily closed while the City and/or its contractors perform Moore Square Work or Moore Square Maintenance within the portion of Moore Square that includes the Licensed Space. In such an event, City shall provide Licensee with at least five (5) days’ prior written notice that the Licensed Space will need to be closed temporarily because of Moore Square Work or Moore Square Maintenance.

The five-days’ written notice referenced in this Section 6.1 must provide Licensee with an estimate for how long the City expects the Licensed Space to be closed because of Moore Square Work or Moore Square Maintenance, though the parties acknowledge that construction and maintenance work can be unpredictable and that the date given in the notice for the reopening of the Licensed Space is only an estimate and not a guarantee that the Licensed Space will be reopened by that date. Upon completion of the Moore Square Work or Moore Square Maintenance affecting the Licensed Space, City shall provide Licensee with written notice that the Licensed Space can be reopened for Café operations.

In the event emergency Moore Square Maintenance must be performed within the portion of Moore Square that includes the Licensed Space, City or its contractors will immediately commence such work without regard to the notice requirement for Moore Square Maintenance in this Section 6.1. If such emergency Moore Square Maintenance requires it, the Licensed Space shall be closed until such time as the emergency Moore Square Maintenance has been completed. City shall have the right to remove Licensee’s Personal Property from the Licensed Space and store same for the benefit of Licensee in order to perform emergency Moore Square Maintenance within the portion of Moore Square that includes the Licensed Space. City shall bear the risk of any damage to Licensee’s Personal Property located within the Licensed Space that results from the negligent performance of emergency Moore Square Maintenance and/or from the City’s removal of such personal property from the Licensed Space because of emergency Moore Square Maintenance. Upon completion of the emergency Moore Square Maintenance affecting the Licensed Space, City

shall provide Licensee with written notice that the Licensed Space can be reopened for Café operations.

City and Licensee acknowledge that City will owe Licensee no compensation for the temporary closure of the Licensed Space for Café operations during Moore Square Work or Moore Square Maintenance, including emergency Moore Square Maintenance. In the event of a temporary closure, however, Licensee will be entitled to receive a credit on the subsequent month's license fee invoice as provided under Section 15.5 below.

Nothing in this Agreement shall limit or negate the regulatory or police power of the City. No action taken by the City in its pursuit of regulatory or police powers shall be deemed a breach of the terms of this Agreement.

**6.2 Licensee's Maintenance Responsibilities.** Licensee, at its sole cost and expense, shall maintain and keep the interior of the Licensed Building Space clean, tidy, and in good order. Licensee's maintenance responsibilities shall include, but not be limited to: (i) daily janitorial services and garbage removal from the interior of the Licensed Building Space; (ii) interior pest control, (iii) cleaning of cooking surfaces, grease traps, and hoods necessary for concession operations, and (iv) cleaning the Outside Seating Area as provided under Section 4.3 above.

Licensee agrees to return the Licensed Space to the City at the expiration of this Agreement in as good condition and repair as the Licensed Space was tendered to Licensee on the Commencement Date, excluding any normal wear and tear.

**6.3 Alteration and Improvements.** Licensee shall make written request to City for any proposed changes, alterations or additions to the Building or Licensed Space. Absent prior written authorization of City, Licensee shall make no changes, alterations or additions to the Licensed Building or Licensed Space, except no written request will be required for minor, non-structural changes or alterations that do not require a building permit and do not cost more than \$\_\_\_\_\_ per alteration. For minor, non-structural changes or alterations that do not require a building permit and cost more than \$\_\_\_\_\_ per alteration (collectively, "Minor Alterations"), City agrees to work in good faith to review and approve requested Minor Alterations, said approval not to be unreasonably withheld, conditioned or delayed by City, within three (3) days of receiving a written request from Licensee.

**6.4 Protection of Property.** Licensee is responsible for the conduct and acts of its employees while engaged in Licensee's business within Moore Square. Any damage to City's property, including but not limited to loss or damages to City Fixtures, structures, parkland and/or equipment, arising from Licensee's business activities or negligence shall be Licensee's responsibility. Unless otherwise agreed, all repairs and replacements must be approved by the City, and Licensee must complete all repairs or replacements within fourteen (14) business days of the occurrence of damage or loss. City is responsible for the conduct and acts of its employees while engaged in the City's business within Moore Square. Any damage to Licensee's property arising solely from City's business activities or negligence shall be City's responsibility. Unless otherwise agreed, all repairs and replacements must be approved by Licensee, and City must complete all repairs or replacements within fourteen (14) business days of the occurrence of damage or loss.

**6.5 Protection Against Liens.** Licensee shall pay promptly when due the entire cost of any work done on the Licensed Space by Licensee or its agents, employees, or independent contractors. Licensee shall not cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Licensed Space, and shall discharge any such liens which may

so be attached within fifteen (15) business days of filing. After a request from City, Licensee shall provide lien waivers to City for any work done on the Licensed Space.

**ARTICLE VII  
UTILITIES**

7.1 **Utilities.** Except as set forth herein, City shall pay all utility bills for electric power, natural gas, water, and sewer services (“Utilities”) associated with the operation of the Licensed Space at the time of Licensee’s initial occupancy of the same.

7.2 **Utility Bills/Service Contracts.** City and Licensee agree that utility bills and service contracts (“Service Obligations”) for the Licensed Space shall be paid by the party indicated below as to each service obligation. In such instance, the party undertaking responsibility for payment of a Service Obligation covenants that they will pay the applicable bills prior to delinquency. City further warrants that reasonable efforts will be made to ensure no Service Obligation is disrupted for maintenance, or because of failure or breakage of the system, for more than the normal period of time necessary for repair or replacement. The responsibility to pay for a Service Obligation shall include all metering, hook-up fees or other miscellaneous charges associated with establishing, installing and maintaining such utility or contract in said party’s name. Within thirty (30) days of the Commencement Date, Licensee shall provide City with a copy of any requested Service Obligation information.

| Service Obligation                  | City | Licensee |
|-------------------------------------|------|----------|
| Sewer/Septic                        | X    |          |
| Water                               | X    |          |
| Electric                            | X    |          |
| Gas                                 | X    |          |
| Telephone/Data/Network/Cable TV     |      | X        |
| HVAC (maintenance/service contract) | X    |          |
| Security System*                    | X    |          |
| Janitor/Cleaning                    |      | X        |
| Trash/Dumpster                      | X    |          |
| Landscaping/Maintenance             | X    |          |
| Sprinkler System                    | X    |          |
| Point of Sale System                |      | X        |
| Indoor Pest Control                 |      | X        |
| Building Façade/Windows (cleaning)  |      | X        |
| Building Façade/Windows (repair)    | X    |          |

\*If Licensee chooses to install a security system solely for the use within the Licensed Space, installation and maintenance of such systems will be the responsibility of Licensee.

7.3 **Supply and Capacity.** City shall not be liable for injury to Licensee’s business or loss of income therefrom or for damage that may be sustained by the person, merchandise or personal property of Licensee, its employees, agents, invitees or contractors or any other person in or about

the Licensed Space, caused by or resulting from fire, steam, electricity, gas, water or rain, which may leak or flow from or into any part of the Licensed Space, or from the breakage, leakage, obstruction or other defects of any utility installations, air conditioning system or other components of the Building, except to the extent that such damage or loss is caused by City's gross negligence or willful misconduct. City represents and warrants that with respect to the heating, ventilation, and air conditioning system(s) and utility installations existing as of the date of Licensee's initial occupancy of the Licensed Space shall be in good order and repair. Subject to the provisions of this Section 7.3, City shall not be liable in damages or otherwise for any discontinuance, failure or interruption of service to the Licensed Space of utilities or the heating, ventilation, and air conditioning system(s) and Licensee shall have no right to terminate this Agreement or withhold any License Fees owed because of the same.

## **ARTICLE VIII TAXES AND ASSESSMENTS**

8.1 **Tax Obligations.** Licensee shall pay all fees and taxes associated with and arising from the operation of Licensee's business upon the Licensed Space, including personal, property, license, privilege, sales, and/or excise taxes assessed or charged against Licensee or the Licensed Space on account of the operation of Licensee's business or on account of Licensee's property. Upon City's demand, Licensee shall provide evidence of payment and satisfaction of any such fees and taxes.

## **ARTICLE IX INSURANCE**

Licensee agrees to maintain, on a primary basis and at its sole expense, at all times during the life of this Agreement the following coverages and limits. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Licensee is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Licensee under this Agreement.

9.1 **Commercial General Liability.** Combined single limit of no less than \$2,000,000 each occurrence and \$4,000,000 aggregate including a minimum \$100,000 fire legal liability limit. Coverage shall be endorsed to include restaurant liability for the sale of alcohol and shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.

9.2 **Automobile Liability.** Limits of no less than \$1,000,000 Combined Single Limit. Coverage shall include liability for Owned, Non-Owned and Hired automobiles. In the event Licensee does not own automobiles, Licensee agrees to maintain coverage for Hired and Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Auto Liability policy. Automobile coverage is only necessary if vehicles are used in the provision of services under this Agreement and/or are brought on a City site.

9.3 **Worker's Compensation & Employer's Liability.** Licensee agrees to maintain Worker's Compensation Insurance in accordance with North Carolina General Statute Chapter 97 with statutory limits and employer's liability of no less than \$1,000,000 each accident.

9.4 **Additional Insured.** Licensee agrees to endorse the City as an Additional insured on the Commercial General Liability, Auto Liability and Umbrella Liability if being used to meet the standard of the General Liability and Automobile Liability. The Additional Insured shall read 'City of Raleigh is named additional insured as their interest may appear'.

**9.5 Certificate of Insurance.** Licensee agrees to provide City a Certificate of Insurance evidencing that all coverages, limits and endorsements required herein are maintained and in full force and effect, and Certificates of Insurance shall provide a minimum thirty (30) day endeavor to notify, when available, by Licensee's insurer. If Licensee receives a non-renewal or cancellation notice from an insurance carrier affording coverage required herein, or receives notice that coverage no longer complies with the insurance requirements herein, Licensee agrees to notify the City within five (5) business days with a copy of the non-renewal or cancellation notice, or written specifics as to which coverage is no longer in compliance. The Certificate Holder address should read:

City of Raleigh  
Post Office Box 590  
Raleigh, NC 27602-0590

**9.6 Umbrella or Excess Liability.** Licensee may satisfy the minimum liability limits required above under an Umbrella or Excess Liability policy. There is no minimum Per Occurrence limit of liability under the Umbrella or Excess Liability, however, the Annual Aggregate limits shall not be less than the highest 'Each Occurrence' limit for required policies. Licensee agrees to endorse City of Raleigh as an 'Additional Insured' on the Umbrella or Excess Liability, unless the Certificate of Insurance states the Umbrella or Excess Liability provides coverage on a 'Follow-Form' basis.

**9.7 Hazard Insurance.** City shall provide hazard insurance on the Building and the Licensed Space. City shall not be responsible for any insurance for Licensee's personal property or trade fixtures including improvements and betterments. Licensee shall be responsible for insuring its personal property and trade fixtures located on the Licensed Space.

All insurance companies must be authorized to do business in North Carolina and be acceptable to the City of Raleigh's Risk Manager.

**9.8 Indemnity.** Except to the extent caused by the sole negligence or willful misconduct of the City, Licensee shall indemnify, defend, and hold and save the City, its officers, agents and employees, harmless from liability of any kind, including all claims, costs (including defense) and losses accruing or resulting to any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims, costs (including defense) and losses accruing or resulting to any person, firm, or corporation that may be injured or damaged by Licensee in the performance of this Agreement. This representation and warranty shall survive the termination or expiration of this Agreement.

This indemnification shall survive the termination or expiration of this Agreement.

**4.1 9.9. Waiver of Subrogation. Notwithstanding the indemnification obligations set out in this Agreement, City and Licensee, for themselves and their respective insurers, release each other from any and all claims, demands, actions, and causes of action that each may have or claim to have against the other for loss or damage to persons or property, both real and personal, caused by or resulting from casualties required to be insured against by the terms of this Agreement or otherwise insured against by the party suffering the loss or damage. The general liability and property insurance policies required by this agreement shall contain**

**a provision whereby the insurer waives all rights of subrogation against either City or Licensee, as appropriate.**

## **4.2 ARTICLE X** **DAMAGE, DESTRUCTION, INTERRUPTIONS**

**10.1 Damage to Licensed Space.** Except as hereinafter provided, in the event the Licensed Space is hereafter damaged or destroyed by fire or other casualty, rendering the same untenable for their accustomed uses ("Property Damage"), then City may either (i) declare this Agreement terminated; or (ii) restore the damaged or destroyed Licensed Space within a reasonable time substantially to the condition in which they were immediately prior to the happening of such casualty, in which event this Agreement shall remain in full force and effect, except Licensee shall not be required to pay License Fees during the time the Licensed Space are untenable for their accustomed uses. In the event City intends to restore the Licensed Space but estimates that the restoration shall take more than 150 days (which estimate shall be provided to Licensee within 30 days following the damage or destruction), then Licensee may elect to terminate the Agreement on written notice to City.

Notwithstanding anything herein to the contrary, in the event such Property Damage is caused by the willful or negligent acts of Licensee, Licensee's employees, agents, or representatives, then this Agreement and Licensee's License Fee payment obligation shall continue through the Term of this Agreement, unless terminated early by the City, and Licensee shall (a) file applicable insurance claims to cover said Property Damage in accordance with the insurance coverage amounts set forth in Section 9.1 above; and (b) reimburse the City any costs incurred by the City to repair or restore the Licensed Space due to said Property Damage, but only to the extent such costs are covered by Licensee's \$100,000 fire liability insurance required to be maintained hereunder.

**10.2 Damage to Park Property.** Licensee shall be responsible for any loss or damage to Moore Square structures, parkland, and/or equipment caused by Licensee, Licensee's employees, agents, or representatives. Licensee shall immediately notify City of any such damage and shall repair or replace any such damage within fourteen (14) business days. All repairs and/or replacements must be approved by the City.

**10.3 Damage to City's Fixtures.** Licensee shall be responsible for the proper custody and care of City's Fixtures and will reimburse City for any loss or damage to City's Fixtures caused by the willful or negligent conduct of Licensee, Licensee's employees, agents, or representatives.

**10.4 Interruptions.** The City shall not be liable to Licensee for any compensation or reduction of License Fees by reason of reasonable inconvenience or annoyance or for loss of business arising from power losses or shortages, interruption in water services or other building services, or from the necessity of City's entering the Licensed Space for any of the purposes authorized in this Agreement, or for repairing the Licensed Space or any portion thereof. When entering the Licensed Space, City shall provide Licensee with reasonable prior written notice, except in the event of an emergency. City agrees to minimize disruption to Licensee's business caused by City's entry into the Licensed Space, and other than in events of emergency, shall venture to schedule any repairs or inspections of the Licensed Space outside of the Café Operating Hours or another time that is mutually agreeable between the Parties.

## **ARTICLE XI** **OPERATION**

11.1 **Operation.** Licensee acknowledges and agrees that it and its staff will normally be perceived by the public as representatives of the City. Licensee agrees as a condition of this Agreement that its use and operation of the Licensed Space as set forth in Article IV herein shall at all times reflect positively upon City's public image and reputation. Licensee agrees as a condition of this Agreement to comply at all times with its obligations under this Agreement. City likewise agrees that its staff and facility will reflect positively upon Licensee and Licensee's public image and reputation.

## **ARTICLE XII ASSIGNMENT**

12.1 **Assignment.** This Agreement may not be assigned by Licensee without the express written consent of the City.

## **ARTICLE XIII PERSONAL PROPERTY; SURRENDER OF LICENSED SPACE**

13.1 **Personal Property.** With City's prior written approval, not to be unreasonably withheld, conditioned or delayed, Licensee may install equipment, appliances, furnishings and/or trade fixtures (hereinafter, "Personal Property") within and upon the Building for Licensee's use in performing services pursuant to this Agreement. Throughout the Term of this Agreement and any extension(s) thereof, the Personal Property shall remain the sole property of Licensee. Licensee shall be solely responsible for maintaining the Personal Property in a safe and sanitary condition at all times. If the condition of any item or component of Personal Property causes the equipment to constitute a possible safety hazard, Licensee shall take immediate action to repair and/or replace such equipment. If immediate repair and/or replacement are impracticable, Licensee shall take immediate steps to warn and/or protect Moore Square visitors, Licensee's employees, and City's employees from the equipment, and shall complete repair and/or replacement of the equipment within seventy-two (72) hours.

Except as expressly stated herein, the parties acknowledge that the City bears no responsibility for loss, damage, or destruction of the Personal Property. The City will not provide insurance coverage of any kind that would cover, protect, repair or replace the Personal Property that it intends to use at the Licensed Space, and any such insurance must be purchased solely at Licensee's discretion and at Licensee's own cost. The City will not reimburse Licensee for the cost of any such Personal Property in the event City revokes the Café License and terminates this Agreement pursuant to Section 16.4 below, or in the event the Café License is revoked and this Agreement terminated automatically pursuant to the terms set forth in Section 16.2 below, or in the event that Licensee terminates this Agreement pursuant to Section 16.5 below. Absent prior written approval of City, not to be unreasonably withheld, conditioned or delayed, Licensee shall not install any permanent or semi-permanent fixtures or equipment within or upon the Licensed Space.

13.2 **Ownership.** All Personal Property installed by Licensee within or upon the Building shall remain the property of Licensee and, subject to Section 13.4, be removable by Licensee at any time. Licensee shall promptly, and at its own expense, repair any damage to the Building or Licensed Space in removing any such property. All personal property, equipment, furnishings, and trade fixtures installed by City within, upon, or about the Licensed Space and/or Building are the property of the City and shall remain the property of the City at the conclusion of this Agreement.

13.3 **Surrender.** Licensee shall, within seventy-two (72) hours of the termination of this Agreement, or any earlier termination of this Agreement for any cause, surrender all keys to

the Licensed Building as occupied by Licensee, its employees, agents, or sub-contractors, to City at the place then fixed for the payment of License Fees.

**13.4 Removal of Personal Property.** Within ten (10) days of the termination of this Agreement, at Licensee's sole cost and expense, Licensee shall (i) remove any and all Personal Property from the Licensed Space and (ii) restore the Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted. Licensee shall provide the City with technical product data on each material and/or cleaning agent that is to be used to perform work arising from the use of the Licensed Space as permitted herein. Any such materials and/or cleaning agents must first be approved by the City prior to the Licensee commencing any such work. In the event Licensee fails to remove the Personal Property from the Licensed Space and/or fails to restore the Licensed Space as required herein, City shall have the right (y) to remove the Personal Property, or have equipment removed, from the Licensed Space and City shall have no responsibility to Licensee for any damage to such equipment resulting therefrom and (z) to restore the Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted. If the City incurs any expense related to, or associated with, the removal of the Personal Property from the Licensed Space and/or the restoration of the Licensed Space to its condition just prior to the Commencement Date (such expenses to include, but not be limited to, the cost of temporarily storing the Personal Property until it is picked up by Licensee), then Licensee shall pay City for the cost thereof within thirty (30) days of City's written demand for payment. The restoration and reimbursement obligations contained in this Section 13.4 shall survive the revocation of the Café License and the termination of this Agreement.

#### **ARTICLE XIV DEFAULT**

**14.1 Default by Licensee.** If default shall be made in the payment of the License Fees, or any installment thereof or default shall be made in the performance of any of the other covenants or conditions which Licensee is required to observe and perform hereunder, or if the interest of Licensee in this Agreement shall be levied on under execution or other legal process, or if any petition shall be filed by or against Licensee to declare Licensee a bankrupt or to delay, reduce or modify Licensee's debts or obligations, or if any petition shall be filed or other action taken to reorganize or modify Licensee's capital structure, or if Licensee be declared insolvent according to law, or if any assignment of Licensee's property shall be made for the benefit of creditors, or if a receiver or trustee is appointed for Licensee or its property, or if Licensee shall abandon the Licensed Space during the Term, then City may treat the occurrence of any one or more of the foregoing events as a breach of this Agreement and shall be entitled to revoke the Café License and terminate this Agreement pursuant to Section 16.3 and Section 16.4 below.

City may give written notice to Licensee of City's election to revoke the Café License and to terminate this Agreement, re-enter the Licensed Space with or without process of law and take possession of the same and of all equipment and fixtures therein, and expel or remove Licensee and all other parties occupying the Licensed Space, using such force as may be reasonably necessary to do, without being liable to any prosecution for such re-entry or for the use of such force.

City may elect to terminate Licensee's occupancy without terminating this Agreement. In addition to such remedies as may be otherwise provided hereunder, City shall be entitled to and Licensee shall pay a late charge equal to the greater of (i) \$\_\_\_\_\_ or (ii) \_\_\_ percent of

such License Fee payment that is more than ten (10) days past due. In addition to all other sums Licensee may owe City under this Agreement, Licensee shall be liable to City for all reasonable costs incurred by City as a result of Licensee's default, including, but not limited to, reasonable attorney's fees and costs of dispossessing Licensee and re-letting the Licensed Space.

**14.2 Default by City.** If default shall be made in the performance of any of the covenants or conditions which City is required to observe and perform hereunder, then Licensee may treat the default as a breach of this Agreement, and thereupon at its option may, with thirty (30) days' written notice to City specifying which covenants or conditions the City has failed to perform and an opportunity to cure the same within such thirty (30) day period, may have any one or more of the following described remedies in addition to all other rights and remedies now or hereafter provided at law or in equity.

Licensee may give written notice to City of Licensee's election to terminate this Agreement.

Licensee may, upon written notice to City, elect to take such actions as are reasonably necessary to cure the City's default, and all sums reasonably incurred by Licensee in relation to curing such default shall be paid by City to Licensee within thirty (30) days of Licensee's written demand for payment.

## **ARTICLE XV MISCELLANEOUS**

**15.1 Remedies Cumulative; Nonwaiver.** No remedy herein or otherwise conferred upon or reserved to City or Licensee shall be considered exclusive of any other remedy, but the same shall be distinct, separate and cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law, equity, or by statute; and every power and remedy given by this Agreement to City or Licensee may be exercised from time to time as often as occasion may arise, or as may be deemed expedient. No delay or omission of City or Licensee to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or acquiescence thereto. No provision of this Agreement shall be deemed to have been waived by City unless such waiver is in writing and signed by City and the acceptance of License Fee by City shall not be deemed a waiver.

**15.2 City's Entry.** After giving reasonable prior notice to Licensee, City shall have the right to enter the Licensed Space during the term of this Agreement for the purposes of inspection, maintenance, repair and alteration of the same. In the event of an emergency, as determined by City in its sole discretion, City shall have the authority to enter and occupy the Building and the Licensed Space without providing prior notice to Licensee for so long as reasonably necessary.

**15.3 Nature and Extent of Agreement.** This instrument contains the complete Agreement of the parties regarding the terms and conditions of the Agreement of the Licensed Space, and there are no oral or written conditions, terms, understandings or other agreements pertaining thereto which have not been incorporated herein. This instrument creates only the relationship of City and Licensee between the parties hereto as to the Licensed Space; and nothing herein shall in any way be construed to impose upon either party hereto any obligations or restrictions not herein expressly set forth. The laws of the State of North Carolina shall govern the validity, interpretation, performance and enforcement of this Agreement.

**15.4 Force Majeure.** Except as otherwise provided in any environmental laws, rules, regulations or ordinances applicable to the parties and the services performed under this Agreement, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign actions, nuclear explosion, earthquake, hurricane, tornado, or other catastrophic natural event or act of God. Either party to the Agreement must take reasonable measures and implement reasonable protections when a weather event otherwise defined as a force majeure event is forecast to be eligible to be excused from the performance otherwise required under this Agreement by this provision.

**15.5 Suspension/Closure.** If Licensee is required by City to close or suspend operations, or if City's actions or inactions result in Licensee being required to close or suspend operations, Licensee, will receive a credit on the subsequent month's License Fee invoice for all such suspensions and/or closures (unless such closures or suspension of operations occur in the last month of the Term, in which event City shall reimburse Licensee for the credit amount within thirty (30) days after the termination of the Agreement). The credit will be prorated based on the number of days in the given month when Café operations were closed or suspended. As stated within Section 15.4, neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by an act of war, hostile foreign action, nuclear explosion, earthquake, hurricane, tornado, severe drought, unusual inclement weather, or other catastrophic natural event or act of God.

**15.6 Partial Invalidity.** If any term, covenant, or condition of this Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**15.7 Number and Gender.** The use herein of a singular term shall include the plural and use of the masculine, feminine or neuter genders shall include all others.

**15.8 Binding Effect/Complete Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement contains the complete understanding and agreement of the Parties subject to it with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

**15.9 Notices.** Any notice required to City or Licensee by the terms of this Agreement shall be deemed given and received on the date of the mailing of such notice in writing to the City or Licensee, as the case may be, provided such notice is transmitted by certified or registered mail, return receipt requested, postage prepaid, or overnight courier, and addressed to the party due such notice as shown under Article III hereof, or such other address as either City or Licensee may give in writing to the other for such notices.

**15.10 Licensee's Acceptance of Licensed Space.** By occupying the Licensed Space pursuant to this Agreement, Licensee hereby accepts the Licensed Space and City's Fixtures "as is", subject to latent defects that are discovered by the parties during Licensee's initial installation of Personal Property prior to the Commencement Date, which defects shall be the City's responsibility to repair. City, at City's expense, shall provide for the Licensed Building Space and Licensed Outdoor Seating Area Space pursuant to this Agreement.

**15.11 Signage.** Licensee shall not erect, construct, install, or place any signs, banners, ads, or displays (hereinafter collectively, "Signage") of any kind whatsoever upon any exterior portion of the Building or Licensed Space without prior written approval from City. The City shall make reasonable efforts to review proposed Signage in a timely manner and approval may not be unreasonably withheld, conditioned or delayed. Any such Signage shall comply with all local ordinances, restrictive covenants, and/or any governmental laws, rules and regulations affecting the Licensed Space. All costs associated with the maintenance or removal of such Signage shall be at Licensee's sole cost and expense.

**15.12 Applicable Law.** All matters relating to this Agreement shall be governed by the laws of the State of North Carolina, without regard to its choice of law provisions, and venue for any action relating to this Agreement shall be Wake County Civil Superior Court or the United States District Court for the Eastern District of North Carolina, Western Division.

**15.13 Amplified Sound.** Absent City's written consent, no external amplified sound is permitted by Licensee upon or about the Licensed Space. Internal amplified sound must be family appropriate and confined to the Building interior.

**15.14 Building Locks.** No additional locks or similar devices shall be attached to any door or window without written consent from City. No keys for any doors other than those provided by the City shall be made. City shall provide Licensee with additional keys upon written request, and Licensee shall return all keys to City within three (3) business days of termination of this Agreement.

**15.15 Care of Property.** Licensee shall be responsible for the proper custody and care of any property furnished or purchased by the City for use in connection with the performance of this Agreement, and will reimburse the City for the replacement value of its loss or damage.

**15.16 Independent Contractor.** Licensee shall be considered to be an Independent Contractor and as such shall be wholly responsible for the work to be performed and for the supervision of its employees. Nothing herein is intended or will be construed to establish any agency, partnership, or joint venture. Licensee represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such employees shall not be employees of or have any individual contractual relationship with the City.

**15.17 Amendment.** This Agreement may be modified or amended, in whole or in part, only by written agreement of the Parties executed by their authorized representatives, with acknowledgement by the Parties that this Agreement (i) may be terminated, and the Café License revoked, by the City without the consent of the Licensee pursuant to Section 16.2, Section 16.3, and Section 16.4 below.

**15.18. Iran Divestment Act Certification.** Licensee certifies that, as of the date of this Agreement, it is not on the Final Divestment List as created by the State Treasurer pursuant to N.C. Gen. Stat. §143-6A-4.

**15.19. Confidentiality.** Notwithstanding any other provisions of this Agreement, this Agreement and all materials submitted to the City by the Licensee are subject to the public records laws of the State of North Carolina and it is the responsibility of the Licensee to properly designate materials that may be protected from disclosure as trade secrets under North Carolina law as such and in the form required by law prior to the submission of such materials to the City. Licensee understands and agrees that the City may take any and all actions necessary to comply with federal, state, and

local laws and/or judicial orders and such actions will not constitute a breach of the terms of this Agreement. To the extent that any other provisions of this Agreement conflict with this paragraph, the provisions of this section shall control.

## **ARTICLE XVI DUTIES UPON REVOCATION/TERMINATION**

**16.1 Duties Upon Termination.** In the event of termination by either party following a default as set forth in Article XIV, Licensee shall be entitled to receive just and equitable compensation for amounts due and payable under the terms of this Agreement, if any, incurred prior to receipt of notice of termination. Licensee shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement, and the City may withhold any payment due to Licensee for the purpose of setoff until such time as the City can determine the exact amount of damages due the City because of the breach. Upon revocation of the Café License and termination of this Agreement for any reason, including termination of the Master License as set forth in Section 16.2 below, Licensee shall remove all Personal Property and restore the Building and Licensed Space pursuant to Section 16.3 below. After termination of this Agreement, Licensee shall have no further right to enter the Licensed Space unless conducting official business with City.

**16.2 Master License/Easement Agreement.** This Café License is being granted to Licensee subject to the terms and conditions of the license (“Master License”) granted by the State to the City for the use of Moore Square under N.C. Gen. Stat. §143-345.4 and the Easement Agreement. Licensee acknowledges that, in the event the Master License is terminated or Moore Square is otherwise repossessed by State pursuant to N.C. Gen. Stat. § 143-345.4, City shall, if so required by State, cause the Improvements as defined in the Master License to be removed from Moore Square no later than six (6) months following the termination of the Master License, unless a longer period for removal is agreed to in writing by State, and restore the Easement Area, as described in Exhibit A to the Easement Agreement, to a condition reasonably satisfactory to State/Grantor.

In the event that the State revokes or terminates the Master License with the City, then the Café License granted herein shall be revoked and this Agreement shall automatically terminate upon the date of such termination or revocation of the Master License by the State. The City shall promptly notify Licensee of such revocation or termination by the State and Licensee shall cease performance immediately upon receipt of such notice. Upon such revocation of the Café License granted herein and termination of this Agreement under this Section 16.2, all rights and obligations as established in Section 16.3 below shall continue to apply to the Parties, except for the buy-out payment obligations which are exclusive to Section 16.3. In the event that the State revokes or terminates the Master License, then the Parties further acknowledge and agree that the City Council has delegated to the City Manager its authority under Section 16.3 below to revoke the Café License without cause and terminate this Agreement, all subject to the notice requirement in Section 16.3 below, unless a shorter notice period is imposed by the State, in which case the State’s notice period shall apply.

**16.3 City Council’s Revocation of License Without Cause.** This License Agreement conveys no property interest to Licensee in Moore Square, and is revocable-at-will by the Raleigh City Council. In the event the Raleigh City Council elects to revoke the License Agreement without cause and terminate this Agreement, the City will give the Licensee six (6) months’ written notice to vacate (the effective date of such revocation, hereinafter the “Termination Date”), including (i) at Licensee’s sole cost and expense, the removal of any and all Personal Property from the Licensed Space and (ii) at the Licensee’s sole cost and expense, the restoration of the Building and Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted. Licensee shall

provide the City with technical product data on each material and/or cleaning agent that is to be used to perform work arising from the use of the Licensed Space as permitted herein. Any such materials and/or cleaning agents must first be approved by the City prior to the Licensee commencing any such work.

In the event Licensee fails to remove the Personal Property from the Licensed Space and/or fails to restore the Building and Licensed Space as required herein upon the revocation of the License by the City pursuant to this Section 16.3 or Section 16.4 below or in the event the License is revoked automatically pursuant to the terms set forth in Section 16.2 above, City shall have the right (y) to remove the Personal Property, or have equipment removed, from the Licensed Space and City shall have no responsibility to Licensee for any damage to such equipment resulting therefrom and (z) to restore the Building and Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted. If the City incurs any expense related to, or associated with, the removal of the Personal Property from the Licensed Space and/or the restoration of the Building and Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted (such expenses to include, but not be limited to, the cost of temporarily storing the Personal Property until it is picked up by Licensee), then Licensee shall pay City for the cost thereof within thirty (30) days of City's written demand for payment. The restoration and reimbursement obligations contained in this Section 16.3 shall survive the revocation of the Café License and the termination of this Agreement.

In further consideration for this Agreement, the parties agree that if the Raleigh City Council elects to revoke the License Agreement without cause during the Initial Term and terminates this Agreement as set forth only under this Section 16.3, then the Licensee shall be entitled to receive a buy-out payment from the City subject to the depreciating payment schedule set forth in the attached "**Exhibit F**". The intent of the depreciating buy-out payment is to reimburse Licensee for up-front costs associated with activating the Café at Moore Square, including the purchase and installation of equipment needed to operate the Café, as set forth in the attached "**Exhibit G**", and other start-up costs, as set forth in the attached "**Exhibit H**". Licensee represents that the information contained in the attached "**Exhibit G**" and "**Exhibit H**" constitutes a good faith estimate of the up-front costs associated with activating the Café at Moore Square. Within sixty (60) days following the opening of the Café, Licensee agrees to provide the City with an updated list of Personal Property in a format that is consistent with the equipment inventory form attached as "**Exhibit I**".

On an annual basis starting on the first anniversary of the Commencement Date and continuing through the expiration of the Initial Term, Licensee agrees to provide the City with an updated list of Personal Property, including Personal Property that has been repaired or replaced by Licensee, as well as all maintenance and warranty records for said Personal Property. During the Initial Term of this Agreement, should Licensee replace any Personal Property as listed in "**Exhibit I**", then the depreciated buy-out payment for the replacement Personal Property shall be based on 100% of the replacement Personal Property's purchase price on the Agreement Year of replacement, and shall then decrease by \_\_\_% each subsequent Agreement Year through the end of the Initial Term. For purposes of calculating the depreciated buy-out payment associated with replacement Personal Property, the City's buy-out obligation for the replacement Personal Property shall not exceed the original purchase price of the Personal Property that is being replaced. In no event shall the total buy-out payment to Licensee for Personal Property exceed \$\_\_\_\_\_.

Within thirty (30) days' of receiving written notice of City's intent to revoke and terminate this License Agreement under this Section 16.3, Licensee shall provide the City with a list of Personal Property that Licensee wishes to keep and remove, thereby excluding said Personal Property from the City's buy-out payment obligation. The City shall not be responsible for purchasing any

replacement Personal Property purchased by Licensee after Licensee receives written notice of City's intent to revoke and terminate this License Agreement under this Section 16.3.

Contemporaneous with Licensee's receipt of the buy-out payment, Licensee agrees to deliver title to the Personal Property to the City free and clear of any liens or encumbrances and with all existing warranties in place, and the City shall thereafter own and control said Personal Property. This buy-out provision does not apply to Personal Property that Licensee leases from a third-party. Should Licensee choose to finance the purchase of Personal Property through a third-party, then Licensee shall be responsible for paying off all outstanding loans on financed Personal Property before the City purchases the same under this buy-out provision. Licensee agrees to execute all documents necessary to effectuate the transfer of ownership and warranties for the Personal Property to the City under this Section 16.3.

**16.4 City Manager's Revocation of License For Cause.** In the event Licensee has failed to satisfy one or more of its obligations under this Agreement or is otherwise in violation of any of the terms of this Agreement, then the City Manager or the Manager's designee on behalf of the City may (but is not obligated to) provide written notice to Licensee of such violation ("Violation Notice"). The Violation Notice shall identify the provision(s) of this Agreement that Licensee is in violation of (including, but not limited to, any obligations under the Agreement that Licensee has failed to satisfy) and shall give Licensee sixty (60) days to cure the violation to the reasonable satisfaction of the City. If the violation has not been cured at the end of the sixty (60) day period, then the City Manager or the Manager's designee, without any action taken by the City Council, may (but is not obligated to) have the License revoked and this Agreement terminated upon Licensee being provided seventy-two (72) hours written notice ("Revocation Notice"). This Revocation Notice shall provide Licensee with the Termination Date. Licensee must vacate the Licensed Space, and at its sole cost and expense, remove all Personal Property from such area and restore the Building and Licensed Space to its condition just prior to the Commencement Date, normal wear and tear excepted, all by the Termination Date. As provided in Section 16.3 above, Licensee shall provide the City with technical product data on each material and/or cleaning agent that is to be used to complete any work arising from the use of the Licensed Space as permitted herein. Any such materials and/or cleaning agents must first be approved by the City prior to the Licensee commencing any such work. If the City should fail to provide Licensee with the Violation Notice, any required cure periods noticed therein, and/or the Revocation Notice, then the revocation of the Café License for a violation of this Agreement shall be ineffective unless and until Licensee remains in violation of the Agreement even after all required notices and cure period(s) have been subsequently provided to Licensee.

In the event Licensee cures the violation after the expiration of the sixty (60) day cure period but before the Termination Date as noticed in the Revocation Notice, the City Manager or the Manager's designee may (but is not obligated to) void the Revocation Notice; provided, however, that the City Manager or the Manager's designee may also (but is not obligated to) continue with the revocation of the Café License and the termination of this Agreement.

The failure or forbearance by the City to enforce any covenant, condition, requirement or term hereunder shall in no event be deemed a waiver of a right to do so thereafter.

This Section 16.4 shall not be construed as in any way limiting the Raleigh City Council's power and authority to revoke the Café License and terminate this Agreement without cause (as also delegated to the City Manager in the event the State notifies the City in writing that the Master License has been revoked or terminated) pursuant to Section 16.3 above. The restoration obligation contained in this Section 16.4 shall survive the revocation of the Café License and the termination of this Agreement.

16.5. **Licensee's Termination of License Without Cause:** Subject to the mutual obligations contained in this Agreement, the Licensee reserves the right to terminate this Agreement without cause, provided that Licensee give the City six (6) months' written notice of its intent to terminate.

*[Signature of Following Page]*

SAMPLE

**IN WITNESS WHEREOF**, Licensee has executed the foregoing with the signature(s) of its duly authorized officer(s), under seal, and the City has executed with the signature of its City Manager, attested by its (Assistant/Deputy) Clerk-Treasurer, with the official seal affixed, the day and year first above written.

**IN TESTIMONY WHEREOF**, this Agreement has been executed by the parties hereto, in duplicate originals, all as of the date of the last signature below.

**CITY OF RALEIGH**

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

City Manager  
City of Raleigh  
Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk & Treasurer

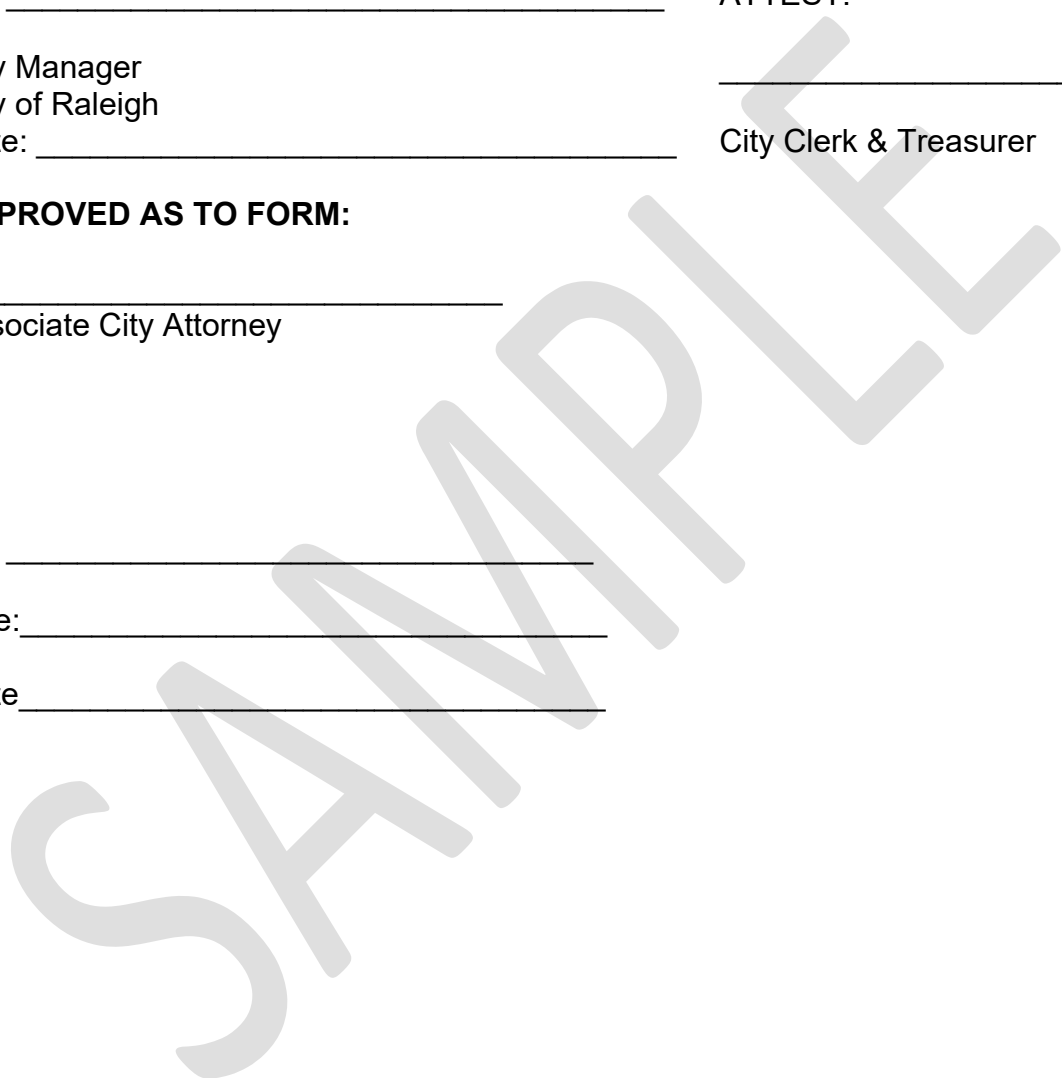
**APPROVED AS TO FORM:**

\_\_\_\_\_  
Associate City Attorney

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

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

Date \_\_\_\_\_



**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

I, \_\_\_\_\_, a Notary Public in County and for \_\_\_\_\_ County, North Carolina do hereby certify that \_\_\_\_\_, with whom I am personally acquainted, who, being by me duly sworn, says that she is the City Clerk and Treasurer and is the City Manager of the City of Raleigh, the municipal corporation described in and which executed the foregoing; that she knows the corporate seal of said municipal corporation; that the seal affixed to the foregoing instrument is said corporate seal, and the name of the municipal corporation was subscribed thereto by the said City Clerk and Treasurer and that the said seal was affixed, all by order of the governing body of said municipal corporation, and that the said instrument is the act and deed of said municipal corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal, this the \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

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

My commission expires: \_\_\_\_\_ Print Name: \_\_\_\_\_

**STATE OF NORTH CAROLINA  
COUNTY OF WAKE**

I \_\_\_\_\_ certify that the following person, \_\_\_\_\_, personally appeared before me, as Manager of \_\_\_\_\_, this day, acknowledging to me that he signed the foregoing document in the capacity indicated.

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

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

(Official Seal)

\_\_\_\_\_  
Printed Name of Notary Public

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

SAMPLE

## APPENDIX V

### SERVICE OBLIGATIONS

| <b>Service Obligations</b>          | <b>City</b> | <b>Licensee</b> |
|-------------------------------------|-------------|-----------------|
| Sewer/Septic                        | X           |                 |
| Water                               | X           |                 |
| Electric                            | X           |                 |
| Gas                                 | X           |                 |
| Telephone/Data/Network/TV           |             | X               |
| HVAC (Maintenance/Service Contract) | X           |                 |
| Security System                     | X           |                 |
| Janitorial/Cleaning                 |             | X               |
| Trash/Dumpster                      | X           |                 |
| Landscape/Maintenance               | X           |                 |
| Sprinkler System                    | X           |                 |
| Point of Sale System                |             | X               |
| Indoor Pest Control                 |             | X               |
| Building Cleaning (Façade/Windows)  |             | X               |
| Building Repair (Façade/Windows)    | X           |                 |

## APPENDIX VI

### ANTICIPATED LICENSE FEE SCHEDULE

| <b>Lease Dates</b>   | <b>Annual Rent</b>  | <b>Monthly Rent</b> |
|--|---------------------|---------------------|
| Year 1: Jan. 1, 2027 – Dec. 31, 2027                           | \$29,365.91         | \$2,447.16          |
| Year 2: Jan. 1, 2028 – Dec. 31, 2028                           | \$29,953.23         | \$2,496.10          |
| Year 3: Jan. 1, 2029 – Dec. 31, 2029                           | \$30,552.30         | \$2,546.03          |
| Year 4: Jan. 1, 2030 – Dec. 31, 2030                           | \$31,163.35         | \$2,596.95          |
| Year 5: Jan. 1, 2031 – Dec. 31, 2031                           | \$31,786.62         | \$2,648.89          |
| <b>Total for initial term</b>                                  | <b>\$152,821.41</b> |                     |
|  |                     |                     |
| Renewal Year 1: Jan. 1, 2032 – Dec. 31, 2032                   | \$32,422.35         | \$2,701.86          |
| Renewal Year 2: Jan. 1, 2033 – Dec. 31, 2033                   | \$33,070.80         | \$2,755.90          |
| <b>Total for initial term + first renewal term</b>             | <b>\$218,314.56</b> |                     |
|  |                     |                     |
| Renewal Year 3: Jan. 1, 2034 – Dec. 31, 2034                   | \$33,732.22         | \$2,811.02          |
| Renewal Year 4: Jan. 1, 2035 – Dec. 31, 2035                   | \$34,406.86         | \$2,867.24          |
| <b>Total for initial term + first and second renewal terms</b> | <b>\$286,453.64</b> |                     |