

GARMENT DISTRICT ALLIANCE

REQUEST FOR PROPOSALS

**TO MANAGE AND OPERATE AN OUTDOOR FOOD OR BEVERAGE MARKET
SUBCONCESSION
ON THE GARMENT DISTRICT PLAZAS**

Release Date: February 10, 2020

Closing Date: March 13, 2020

I. INTRODUCTION

The Garment District Alliance, also known as the Fashion Center District Management Association, Inc. (“GDA”), a New York City Business Improvement District and a not-for-profit corporation organized under the laws of the State of New York, is seeking proposals (“Proposals”) from qualified firms (“Proposers”) by this request (“Request” or “RFP”) to manage and operate an outdoor food and beverage market subconcession (“Market”) on one or more of the Broadway Boulevard Plaza areas (“Plazas”), located on Broadway between 36th and 41st Streets, as more particularly hereinafter described.

There are five Plazas on Broadway in the Garment District: from 36th to 37th Street; 37th to 38th Street; 38th to 39th Street; 39th to 40th Street; and 40th to 41st Street. All Plazas are furnished with tables, chairs, distinctive benches and planters and are open year-round (weather dependent). There are Citibike (bike share) station docks on the south end of the 36th to 37th Street plaza and on the south end of 38th to 39th Street plaza. The GDA installs and maintains public art installations at selected locations on the Plazas and at various periods of time throughout the year.

The GDA was created in 1993 and provides a number of programs and services in the area, including supplemental sanitation and security, capital and other public space improvements, marketing and promotion, homeless outreach and property and business owner assistance. Located in midtown Manhattan, the GDA area covers approximately 35th to 41st Streets, from Fifth to Ninth Avenues (“District”).



The Plazas were created by the New York City Department of Transportation (“DOT”) in July, 2009. The GDA has a concession license agreement (“License Agreement”) with DOT for the operation,

management and maintenance of the Plazas allowing for the operation and management of subconcession(s), where no leasehold or other proprietary rights are offered. The GDA will make copies of the License Agreement available to any Proposer who wishes to review it in its entirety.

If a satisfactory Proposal is received, it is anticipated that the GDA will enter into a sublicense agreement (the "Sublicense Agreement") with the successful Proposer for a one year period starting on execution of the Sublicense Agreement ("Sublicense Period"). Four additional one-year options to renew may be in effect subsequent to the initial term, contingent on the GDA's renewal of its License Agreement with DOT. Although the Sublicense Agreement may be in effect for up to five years, a termination clause for both parties shall be included in the Sublicense Agreement. The successful Proposer will be required to execute terms of the Sublicense Agreement, which may include terms and conditions, including but not limited to those outlined in **Appendix B**.

It is the goal of the GDA to draw customers to a successfully-branded food and beverage market subconcession and to work closely with the chosen Proposer to create a neighborhood amenity that is commercially successful, has an attractive image and concept, and enhances the atmosphere of the Plazas and this vibrant neighborhood.

II. PERTINENT DATES

- A. Pre-Bid Conference:** A pre-bid conference will be held on Wednesday, **February 19, 2020**, 10:00 am. The conference will be held at the Alliance office, 209 West 38th Street, 2nd Floor. Potential Proposers must RSVP prior to the pre-bid conference via email to jscupp@garmentdistrictnyc.com or (212) 764 9600.
- B. Questions:** Questions related to this RFP should be submitted in writing to the GDA no later than **February 28, 2020**. All questions should be directed to Gerald Scupp, Vice President, via email, jscupp@garmentdistrictnyc.com. Questions and responses from the GDA will be shared with other Proposers on the GDA website, garmentdistrict.nyc.
- C. Proposals:** All Proposals are due by 5:00 p.m. on **March 13, 2020**. (the "Closing Date").

III. PROPOSAL SUBMISSION PROCESS

- A.** Proposals must be received by the GDA by the Closing Date. Proposals received after the Closing Date may not be accepted.

Proposals may be submitted electronically to jscupp@garmentdistrictnyc.com.

Proposals may be submitted in print to:

Garment District Alliance
209 West 38th Street, 2nd Floor
New York, NY 10018
Attention: Gerald Scupp, Vice President

The GDA will not accept oral Proposals or Proposals submitted solely by facsimile.

- B.** Proposals shall contain the following:
- 1) Annual subconcession fee proposal;
 - 2) Detailed description of proposed outdoor food or beverage market subconcession, including but not limited to potential menus and price lists;
 - 3) Statement of qualifications including but not limited to the number of years of experience providing food and/or beverage service, a list of all operating businesses, letters of reference and examples of other similar operations if applicable;
 - 4) Complete copies of all relevant permits, licenses, operating certificates and other documents that provide or otherwise evidence the Proposer's due authorization to conduct a retail food or beverage establishment in the City of New York must accompany its response to this Proposal, together with copies of any violations issued by The New York City Department of Health and Mental Hygiene or any other City agency received in the last three years, and their status;
 - 5) Financial statements indicating that the Proposer is in solid financial health and has the ability to manage and operate a business;
 - 6) Drawing or schematics of proposed subconcession structure(s) and any other elements to be placed on the Plazas.

IV. TERMS GOVERNING REQUEST AND SELECTION

A. Review of Proposals

The GDA will review all Proposals for completeness and compliance with the terms and conditions hereof. The GDA reserves the right to request additional materials, including those it may deem useful or appropriate to evaluate each Proposer's qualifications and past experience, or clarification or modification of any submitted Proposal. Submission of a Proposal shall constitute the Proposer's permission to the GDA to make such inquiries concerning the Proposer as the GDA in its discretion deems useful or appropriate. The GDA is not obligated to make any such request or to accept any unsolicited additional materials, clarification, modification or background information. The GDA may conduct discussions with Proposers submitting acceptable proposals but it also may award a sublicense with no further discussions. The Alliance reserves the right, in its sole discretion, to reject at any time any or all Proposals, to withdraw this Request without notice.

The GDA will select the Proposer which, in the sole judgment of the GDA and approved by DOT, most successfully demonstrates the necessary qualities to undertake the project, offers the most favorable financial terms, and best meets the needs and goals of the GDA. The GDA reserves full right to reject all Proposals if it so chooses. Under no circumstances will the GDA pay any costs incurred by a Proposer in responding to this Request. The review or selection of a Proposal submitted by a Proposer will create no legal submission or equitable rights in favor of the Proposer, including without limitation, rights of enforcement or reimbursement.

Failure by the GDA for any reason to select a Proposer or to enter into a Sublicense Agreement with a Proposer once selected as a result of this Request will not create any liability on the part of the GDA or any of its members, officers, employees, agents, consultants or other Proposers. Submission of a Proposal in response to this Request will constitute a waiver of any claim against any of the foregoing for any costs incurred or for any matters arising thereunder or in connection with the review of such Proposal by the GDA.

The successful Proposer may be subject to completing and submitting an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the NYC Mayor's Office of Contract Services to determine Proposers' previous track record and contractual experience with the City of New York.

B. Selection Criteria

Proposals will be evaluated based on the following criteria:

- Annual subconcession fee proposal (35 percent);
- The Proposer's expertise as a food and/or beverage operator, and its experience as a successfully branded establishment which will draw a customer-base (25 percent);
- The quality of proposed subconcession operations and service model (25 percent);
- Design proposal for the subconcession (15 percent).

C. Execution of Sublicense Agreement

The submission of a Proposal with respect to the GDA shall constitute an agreement by the Proposer to execute a Sublicense Agreement with the GDA which may include terms and conditions outlined in **Appendix B** in addition to any other terms and conditions deemed appropriate by the GDA and DOT. If the GDA notifies the Proposer that it has been selected, then Proposer shall execute a Sublicense Agreement with the GDA within two weeks of such notification and receipt of an execution copy. In the event that the successful Proposer fails to execute a Sublicense Agreement expeditiously for any reason within such period, the GDA may void the selection and negotiate and execute a Sublicense Agreement with another Proposer (or no Proposer, if it so chooses).

V. RESPONSIBILITIES OF THE GDA

The GDA is responsible for the ongoing maintenance of certain aspects of the Plazas and provides the following services in accordance with contractual requirements and in furtherance of organizational goals:

- Cleaning/Trash Removal;
- Provision and Maintenance of Landscape Elements;
- Provision and Maintenance of Table and Seating Elements;
- Conditional Snow Removal
- Conditional Repair of Certain Plaza Amenities

The aforementioned responsibilities are more specifically defined in the Services section of the License Agreement with DOT. The subconcession should not present an undue burden on the operations of the GDA and its maintenance of the Plazas.

VI. RESPONSES TO THIS PROPOSAL

A. Proposers' Annual Fee for Subconcession

Proposers shall provide a minimum annual subconcession fee in response to this RFP. The GDA reserves the right to negotiate a percentage value of the successful Proposer's annual gross revenues as an option to the annual fee, whereby the successful Proposer would pay the GDA either the proposed annual fee or the negotiated percentage of annual gross revenues, whichever is higher on an annual basis.

B. Description of Proposer's Experience and Qualifications

Proposers shall provide information about all existing food and beverage operations, including specific locations, number of years in business, information on customer base and/or sales, etc. Proposers shall highlight the quality and uniqueness of food or beverage offered and service operations. If applicable, Proposers should provide specific examples of any existing or prior food and/or beverage market subconcession(s) operating in public spaces in New York City. Information on how these operations attract and retain customers, enhance, and provide amenities for public spaces shall also be included.

C. Minimum Services to be Offered

At a minimum, the successful Proposer shall provide a food and/or beverage market subconcession for one or more locations on the Plazas. The placement of the food and/or beverage market subconcession shall not block pedestrian walkways or in any way create an impediment to pedestrian and public safety in the Plazas. No products or merchandise beyond food or beverage shall be provided for sale without prior approval from the GDA and DOT.

The successful Proposer must provide in the proposal for the removal of all trash, litter and/or debris from the subconcession area. Areas are to be cleaned throughout the course of the day such that these areas remain clean on a continuous basis. Trash, litter and/or debris build-up for end-of-day removal shall not be permitted.

D. Other Considerations

- 1. Locations:** The subconcession may be on one or more Plazas and may take all or part of a plaza subject to Citi Bike station docks, GDA landscape, furniture, and artwork, and any other required elements. Proposals must specify the preferred plaza(s) and location(s) of the subconcession. Proposers may provide a seating area in addition to or in lieu of the existing tables and chairs currently on the Plazas, however, such seating area cannot be exclusively designated for subconcession use only. While there is no limit on the maximum number of tables and chairs to be placed in the seating area, prior approval of the market design by the Alliance shall be required. Tables and chairs may be stored off-site during the overnight period, but it shall be the responsibility of the successful Proposer.
- 2. Subconcession Structures:** Only subconcession structures that are moveable but not mobile and can change position and be easily removed will be considered. The successful Proposer may need to be flexible at times due to events, construction, City infrastructure repair, and other activities that occur on the Plazas that might temporarily displace the subconcession.
- 3. Infrastructure:** No permanent infrastructure will be allowed on the Plazas nor is there any guarantee that storage in the area will be available. Any subconcession structures must be self-sustaining with regard to water and power. Usage of water and power (e.g. pole tapes or generators) must be addressed in the Proposal and be in accordance with NYC regulations.
- 4. Menus and Prices:** Menus and price lists are subject to the approval of the GDA and DOT. The GDA shall receive notification of any price increases for the duration of the Sublicense Period.
- 5. Hours of Operation:** The hours and days of operation are the successful Proposer's decisions, subject to GDA approval, provided that the subconcession may not begin operating prior to 8:00 AM or after 9:00 PM on any given day, and that all tables and chairs, if applicable, must be removed from the subconcession area by the successful Proposer no later than 10:00 PM.
- 6. Alcoholic Beverages:** The successful Proposer may be permitted to serve alcoholic beverages (beer and wine only) at the subconcession within a designated seating area if the successful Proposer obtains the required New York State Liquor License, a copy of which must be

submitted to the GDA prior to the commencement of any alcoholic beverage service. Subconcession staff serving alcoholic beverages must be of legal age, and subconcession staff will be required to check identification of all patrons to ensure that the legal drinking age is enforced.

- 7. Authority to Provide Food Service:** Complete copies of all relevant permits, licenses, operating certificates and other documents that provide or otherwise evidence the Proposer's due authorization to conduct a retail food establishment in the City of New York must accompany its response to this Proposal, together with copies of any violations issued by The New York City Department of Health and Mental Hygiene and their status. The GDA will expect the successful Proposer to maintain the highest health code ratings.
- 8. Design of Market Structures and Placement of Structures:** Using **Attachment A**, the Garment District Plaza Site Plan, each Proposer shall provide a layout of the area(s) proposed to be used for the subconcession. A description and drawings/schematics of the proposed subconcession area (including any moveable (but not mobile) subconcession structure) shall be provided with the responses to this Proposal. Such descriptions and drawings/schematics shall include but not be limited to color, dimensions, material and other similar specifications, accompanied by photographs and manufacturer specifications of proposed furnishings. The GDA expects the overall appearance of the subconcession and any moveable (but not mobile) subconcession structures to enhance the aesthetic of the Plazas to integrate with the overall context of its surrounding area.

Approval of the subconcession's structural design and its surrounding area resides exclusively with the GDA and the City of New York. Their decision is final and binding upon the selected Proposer.

VII. GENERAL TERMS

A. License Agreement

Attachment B is for informational purposes only and highlights some of the terms and conditions of the License Agreement as it pertains to the subconcession and its operations. Please note that any award pursuant to this RFP and any subsequent Sublicense Agreement is contingent upon the approval and execution of the License Agreement.

Notwithstanding the foregoing, the successful Proposer is advised that the Sublicense Agreement is subject and subordinate to the License Agreement and is subject in all respects to the approval of DOT.

B. Accounting and Recordkeeping

The successful Proposer shall:

- 1)** keep complete and accurate records, books of account and data (including daily sales and receipts records) in accordance with generally accepted accounting practices clearly segregating gross revenues received from or attributable to operation of the Market from the successful Proposer's other area food business revenues and showing in detail the total business transacted by successful Proposer at the Market;
- 2)** submit upon request monthly financial statements to the GDA; and
- 3)** at the end of the Sublicense Period, provide to or make available for examination complete copies of such books and records indicating the Market's gross revenues during the Sublicense Period to the GDA, DOT, the Comptroller of the City of New York and other duly authorized representatives of the City of New York.

C. Licenses, Permits, Etc.

The successful Proposer shall be responsible, at its sole cost, for obtaining all required permits, licenses, approvals, and authorizations from any and all appropriate City, State and Federal agencies necessary to operate and manage the subconcession as contemplated in the Sublicense Agreement.

D. Insurance and Indemnification

The successful Proposer shall procure and maintain throughout the Sublicense Period, at its sole cost, Commercial General Liability insurance dedicated to the Market and its operations of not less than \$3 million combined single limit per occurrence and \$5 million aggregate and statutory limits of Worker's Compensation, Employer's Liability and Disability Benefits Insurance. All insurance policies other than Worker's Compensation, Employer's Liability and Disability Benefits Insurance must name the Alliance and the City of New York, its officials, employees and agents, as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form CG 0001 and ISO Form CG 20 26 (11/84 ed.). The GDA reserves the right to require higher liability limits and other terms, if warranted.

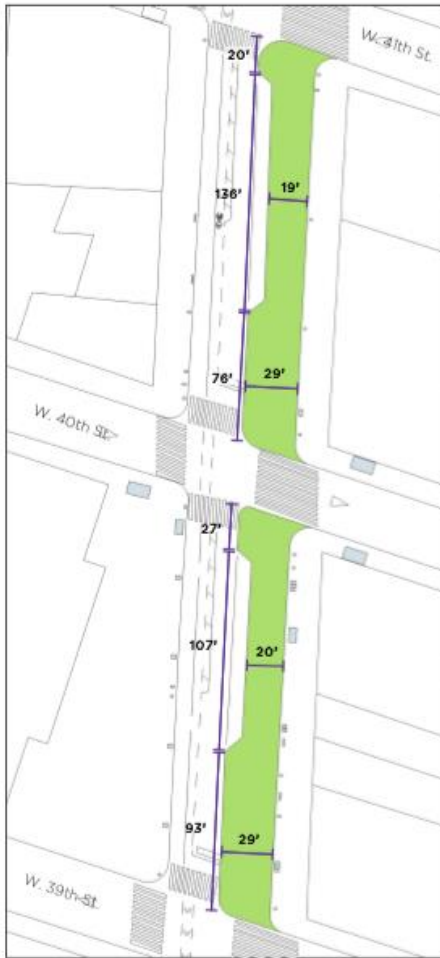
The successful Proposer shall indemnify and hold harmless the GDA and the City/DOT with respect to the operation of the subconcession.

E. Ongoing Compliance

The successful Proposer shall faithfully perform and carry out the provisions of Sublicense Agreement and cause its agents, employees, and invitees to conform to all rules, regulations, and orders now prescribed or which may hereafter be prescribed by DOT and the GDA. The successful Proposer shall also comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Market and the successful Proposer's use and occupation thereof, including to but not limited to the provisions of the New York State Labor Law regarding gratuities.

ATTACHMENT A

SITE PLAN OF GARMENT DISTRICT PLAZAS



ATTACHMENT B

Selected Provisions from License Agreement between DOT and the GDA

As noted above, the Fashion Center District Management Association, Inc., which entered into the License Agreement with DOT is now doing business as the Garment District Alliance (GDA).

6. SUBCONCESSION(S)

A. GDA may, subject to DOT's prior approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in Exhibit A. Such subconcessionaire(s) shall not be related to or affiliated with GDA.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and GDA shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. GDA must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. The GDA shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold"). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT's approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with GDA's written request for approval.

F. GDA shall require its subconcessionaire(s) to indemnify the City and obtain insurance coverage in accordance with the terms and conditions set forth in Sections 11 and 12 herein.

G. The subconcession agreement(s) may not be assigned without the prior written consent of DOT. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

7. OPERATION OF THE SUBCONCESSION(S)

A. GDA shall provide for the maintenance, operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. GDA and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. GDA shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

- (1) operate the Subconcession(s) as provided herein; and
- (2) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s) in good order and repair, consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. GDA shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for GDA's approval. The information submitted to and approved by GDA by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. GDA shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. GDA shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30th) day following the end of each fiscal year, GDA shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, GDA shall require its subconcessionaire(s) to submit to GDA such statement of Revenue on a monthly basis.

- (1) GDA shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30th) day following the termination of this License or the subconcession agreement(s), or June 30th,

whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to GDA by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) GDA shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) GDA shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. GDA shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating.

(1) GDA shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) GDA shall require its subconcessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. GDA shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and GDA shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency.

GDA shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. GDA shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. GDA shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. GDA shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. GDA shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (1) collect and safeguard all monies generated under this License;
- (2) maintain the Subconcession(s) in accordance with this License;
- (3) conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) secure the Subconcession(s).

J. GDA shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. GDA shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either GDA or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT.

M. GDA shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. GDA shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. GDA shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to GDA's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if GDA or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be GDA's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's reasonable prior approval.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars or any other tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. GDA may permit its subconcessionaire(s) to sell wine and beer only with the appropriate license from the State Liquor Authority ("SLA"). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza. Additionally, GDA shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind.

U. GDA shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) GDA, may or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT's prior written approval. GDA shall not apply any Revenue to any such design, fabrication, construction and installation of any Subconcession(s) and/or subconcession structure. Upon installation, title to all construction, renovation, improvements, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Subconcession(s) and/or any subconcession structure, GDA shall, or shall cause its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of GDA or its subconcessionaire(s).

(2) GDA shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation and maintenance activities at the Licensed Plaza.

(3) GDA shall or shall cause its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(4) GDA shall or shall cause its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(5) During the term of this License, GDA shall be responsible for the protection of the Subconcession(s) and/or any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, GDA shall or shall cause its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of GDA or its subconcessionaire(s). Notwithstanding the foregoing, in the event of such damage, loss, or injury, GDA alternatively may, or may cause its subconcessionaire(s) to, promptly replace the Subconcession(s) and/or any subconcession structure at the sole cost and expense of GDA or its subconcessionaire(s), and with DOT's prior written approval. GDA shall not apply any Revenue to any such replacement.

(6) GDA shall or shall cause its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. GDA shall or shall cause its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

(7) As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

(8) GDA shall provide written notice to DOT when the Subconcession(s) is substantially completed, and DOT shall inspect the Subconcession(s) within a reasonable time

after receipt of such notice from GDA. After such inspection, DOT and GDA shall jointly develop a single final “punch list” incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. GDA shall proceed with diligence to complete all “punch list” items within a reasonable time as determined by DOT.

(9) In the event that GDA fails to comply with any phase of the construction of the Subconcession(s) for a period of thirty days following written notice to cure, DOT may terminate this License by giving ten days written notice of termination.

(10) GDA shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) during such construction. GDA shall or shall cause its subconcessionaire(s) to use its best efforts to discharge such liens within thirty business days of receipt of lien by GDA.

(11) GDA shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion.

(12) GDA shall keep DOT fully informed of GDA’s progress in the construction of the Subconcession(s).

(13) All risks of construction of the Subconcession(s) are hereby expressly assumed by GDA except as may be specifically provided otherwise herein. The Subconcession(s) will be designed, constructed, maintained, secured and insured entirely at GDA’s expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and GDA shall pay all municipal fees and impositions in connection therewith.

W. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by GDA and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier that is not otherwise associated with the Licensed Plaza.

X. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.