

Flatiron/23rd Street Partnership Business Improvement District

REQUEST FOR PROPOSALS

**TO MANAGE AND OPERATE AN OUTDOOR FOOD OR
BEVERAGE SUBCONCESSION IN THE FLATIRON PLAZA
“SOUTH”**

ISSUE DATE: January 15, 2019

DUE DATE February 22, 2019

I. INTRODUCTION

The Flatiron/23rd Street Partnership Business Improvement District (“BID”), 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 subconcession (“Subconcession”) at the Flatiron South Plaza located on Broadway between 22nd and 23rd Streets as more particularly hereinafter described (referred to as the “Plaza”). The Plaza is furnished with tables, chairs, umbrellas, and planters, and is open year-round (weather dependent).

It is the goal of the BID to work closely with the chosen Proposer to create a Subconcession that is successful and enhances the atmosphere of the Plaza and this vibrant neighborhood. The Subconcession should provide an amenity for those who work and live in the area as well as those who visit the Plaza.

The BID was created in 2006 and provides a number of programs and services in the area, including supplemental sanitation and security, marketing and promotion, homeless/social service outreach, and additional public improvements, including a suite of streetscape and horticulture services. The BID service area covers roughly 21st to 28th Streets, bounded by Sixth Avenue on the west to Third Avenue on the east (area, including the Plaza, is outlined in more detail in **Attachments A and B.**)

The Plaza was constructed/installed by the New York City Department of Transportation (“DOT”) in 2008. The BID has a concession license agreement (“License Agreement”) with DOT for the operation, management and maintenance of the Plaza allowing for the operation and management of subconcession(s), where no leasehold or other proprietary rights are offered. The BID will make copies of the License Agreement available to any Proposer who wishes to review it in its entirety. The BID is responsible for the ongoing maintenance of the Plaza. Such maintenance services will include but not be limited to cleaning and trash removal, snow removal (walkways), and landscape maintenance.

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 BID and its maintenance of the Plaza.

II. SUBLICENSE AGREEMENT

A. If a satisfactory Proposal is received, it is anticipated that the BID will enter into a sublicense agreement (the “Sublicense Agreement”) with the successful Proposer for a period starting on execution of the Sublicense Agreement and for a maximum term ending on June 30, 2019 (“Sublicense Period”). Up to three additional five-year options to renew may be in effect subsequent to the initial term, contingent on the BID’s renewal of its License Agreement with DOT.

B. Although the Sublicense Agreement may be in effect for up to 15 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 C.

C. The Proposer is advised that the Sublicense Agreement is subject and subordinate to the License Agreement with DOT.

III. PERTINENT DATES

- A. A pre-proposal conference will be held on January 24, 2019 that will include a site visit to the Plaza.
- B. Questions related to this RFP should be submitted in writing to the BID no later than 5:00PM EST on February 1, 2019.
- C. All Proposals are due by 5:00PM EST on February 22, 2019. (the “Closing Date”).

IV. PROPOSAL SUBMISSION PROCESS

- A. Five (5) copies of a written Proposal must be received by the BID by the Closing Date. Proposals received after the Closing Date will not be accepted.

Proposals shall be addressed as follows:

**FLATIRON/23RD STREET PARTNERSHIP
27 WEST 24TH STREET
Suite 800B
ATTENTION: KURT CAVANAUGH, DEPUTY DIRECTOR**

The BID will not accept oral Proposals or Proposals submitted solely by facsimile, electronic mail, etc. Proposals should be submitted electronically in addition to the hard copy proposals delivered to the address above. Electronic proposals may be submitted to Kurt Cavanaugh at kcavanaugh@flatironbid.org

All questions regarding the RFP must be in writing and should be directed to Kurt Cavanaugh, Deputy Director, via electronic mail (kcavanaugh@flatironbid.org). Questions should be submitted no later than February 1, 2019 at 5:00PM EST. Questions and responses from the BID will be shared with other Proposers on the BID’s website no later than February 4, 2019 at 5:00PM

A pre-proposal conference will be held 10:00AM EST on January 24, 2019 at the BID’s office (27 West 24th Street, Suite 800B, New York, NY 10010). Potential Proposers should RSVP prior to the pre-proposal conference via email to kcavanaugh@flatironbid.org or via phone at (212) 741-2323.

- B. Proposals shall contain the following:
 - 1) Annual fee proposal;
 - 2) Detailed description of proposed Subconcession operations, including but not limited to menus and price lists;
 - 3) Statement of qualifications including but not limited to the number of years of experience providing retail food and beverage service, a list of all operating businesses, letters of reference and examples of other Subconcession 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 food service 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; and
 - 6) Conceptual drawings of the proposed Subconcession.

V. TERMS GOVERNING REQUEST AND SELECTION

A. Review of Proposals

The BID will review all Proposals for completeness and compliance with the terms and conditions hereof. The BID 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 BID to make such inquiries concerning the Proposer as the BID in its discretion deems useful or appropriate. The BID is not obligated to make any such request or to accept any unsolicited materials, clarification, modification or background information. The BID may conduct discussions with Proposers submitting acceptable proposals but it also may award a sublicense with no further discussions. The BID reserves the right, in its sole discretion, to reject at any time any or all Proposals, or to withdraw this Request without notice.

The BID will select the Proposer which, in the sole judgment of the BID and approved by DOT, most successfully demonstrates the necessary qualities to undertake the project as stated in IV(B) below. The BID reserves the full right to reject all Proposals if it so chooses. Under no circumstances will the BID 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 BID 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 BID 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 BID.

The successful Proposer shall be required to 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 successful Proposer, including this Subconcession, during the immediately preceding twelve-month period equals or exceeds \$100,000.

B. Selection Criteria

Proposals will be evaluated based on the following criteria (see section V below):

- Annual fee proposal (30 percent);
- The Proposer's expertise and experience as a food and beverage sublicense (25 percent);
- The quality of proposed operations and service model (30 percent);
- Design proposal for Subconcession (and surrounding seating area, if applicable) (15 percent).

C. Execution of Sublicense Agreement

The submission of a Proposal shall constitute an agreement by the Proposer to execute a Sublicense Agreement with the BID, which may include terms and conditions outlined in **Attachment C** in addition to any other terms and conditions deemed appropriate by the BID and DOT. If the BID notifies the Proposer that it has been selected, then Proposer shall execute a Sublicense Agreement with the BID within two weeks of such notification and receipt of an executable copy. In the event that the successful Proposer

fails to execute a Sublicense Agreement expeditiously for any reason within such period, the BID may void the selection and negotiate and execute a Sublicense Agreement with another Proposer. The BID may also decide not to enter into any Sublicense Agreement.

VI. RESPONSES TO THIS PROPOSAL

A. Pre-Proposal Conference

A pre-proposal conference will be held on January 24, 2019 at 10:00AM EST at 27 West 24th Street, Suite 800B, New York, NY 10010. Attendance is not mandatory. See section III(A) above.

B. Proposer's Annual Fee for Subconcession

Proposers shall provide a minimum annual fee proposal in response to this RFP. The BID 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 BID either the proposed annual fee or the negotiated percentage of annual gross revenues, whichever is higher on an annual basis.

C. Description of Proposer's Experience and Qualifications

Proposers shall provide information about all of their existing food or 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 existing food or beverage operations. If applicable, Proposers should provide specific examples of any existing or prior food or beverage subconcession(s) operating in public spaces in New York City. Information on how these operations attract and retain customers and enhance and provide amenities for public spaces shall also be included.

D. Minimum and Additional Services to be Offered

At a minimum, the successful Proposer shall provide a Subconcession for the Plaza. The placement of the Subconcession and surrounding seating area, if applicable, shall not block pedestrian walkways or in any way create an impediment to pedestrian and public safety in the Plaza. No products or merchandise beyond food or beverage shall be provided for sale without prior approval from the BID and DOT.

The successful Proposer must provide 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.

The successful Proposer may also provide the following services:

- Seating Area – Proposers may provide seating in conjunction with the Subconcession, subject to approval by BID and DOT. Such seating cannot be exclusively designated for Subconcession use only, unless otherwise approved by DOT. Tables and chairs may be stored on-site but it will be the responsibility of the successful Proposer to secure them each night. If the successful Proposer is providing a seating area specific to the Subconcession, the cost of supplying, maintaining, and replacing the tables and chairs would be the responsibility of the successful Proposer. Please refer to the site diagram for a layout of the Plaza.

E. Other Considerations

- No permanent infrastructure will be allowed in the Plaza, nor is there any guarantee that storage in the area will be available. Moveable but non-mobile structures or other light structures that can change position will be considered, and the Subconcession must be self-sustaining with regard to water and electric service. The successful Proposer may need to be flexible at times due to events and other activities that occur in the Plaza that might temporarily displace the Subconcession.
- Menus and price lists shall be subject to the approval of the BID and DOT. The BID shall receive notification of any price increases for the duration of the Sublicense Period.
- The hours and days of operation are the successful Proposer's decisions, subject to approval by BID and DOT, provided that the Subconcession may not begin operating prior to 7:00 AM or after 9:00 PM on any given day, and that all tables and chairs must be removed from the Subconcession area by the successful Proposer no later than 10:00 PM.
- The successful Proposer may be permitted to serve alcoholic beverages (beer and wine only) at the Subconcession within the designated seating area if the successful Proposer obtains the required State Liquor License, a copy of which must be submitted to the BID 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.

F. Authority to Provide Food & Beverage 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 food service 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 BID will expect the successful Proposer to maintain the highest health code ratings.

G. Design of Subconcession

Using **Attachment A**, the Plaza Map, each Proposer shall provide a layout of the area proposed to be used for the Subconcession at the Plaza. There are specific constraints to the space as indicated in **Attachment C**.

A description and conceptual drawings of the proposed Subconcession and surrounding area shall be provided with the responses to this Proposal. Such descriptions and drawings shall include but not be limited to color, dimensions, material and other similar specifications, accompanied by photographs and manufacturer specifications of proposed furnishings. The BID expects the Subconcession to enhance the aesthetic of the Plaza to integrate with the overall context of its surrounding area.

As referenced above, no permanent infrastructure will be allowed in the Plaza. Only moveable but non-mobile structures (i.e., no wheels) or other light structures that can change position will be considered. The Subconcession structure must be self-sustaining with regard to water and electric service.

Approval of the Subconcession design and surrounding area shall be at the sole discretion of the BID and the City, including but not limited to the following entities, LPC, PDC and DOT. The decision is final and binding upon the selected Proposer.

VII. GENERAL TERMS

Attachment C 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 operation.

Notwithstanding the foregoing, the Proposer is advised that the Sublicense Agreement is subject and subordinate to the License Agreement.

Additionally, the successful Proposer shall be subject, without limitation, to the following terms and conditions:

1. The successful Proposer shall: (a) 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 outdoor public market from the successful Proposer's other area public market revenues and showing in detail the total business transacted by successful Proposer at the subconcession; (b) submit monthly financial statements to BID; and (c) at the end of the Sublicense Period, provide to or make available for examination complete copies of such books and records indicating the Subconcession's gross revenues during the Sublicense Period to the BID, DOT, the Comptroller of the City of New York and other duly authorized representatives of the City of New York.
2. 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.
3. The successful Proposer shall procure and maintain insurance throughout the Sublicense Period, at its sole cost and expense, including but not limited to the following:
 - Commercial General Liability Insurance: of not less than three million dollars (\$3,000,000) combined single limit per occurrence, and five million dollars (\$5,000,000) aggregate.
 - Workers' Compensation and Disability Benefits Insurance: in accordance with the laws of the State of New York.
 - Employer's Liability Insurance: of not less than one million dollars (\$1,000,000) for any one occurrence.
 - Automobile Liability Insurance: Commercial Automobile Liability Insurance covering all owned, non-owned, hired and borrowed vehicles of not less than one million dollars (\$1,000,000) for any one occurrence.
 - Unemployment Insurance: as required by statute.
 - Liquor Law Liability Insurance: five million dollars (\$5,000,000) per occurrence

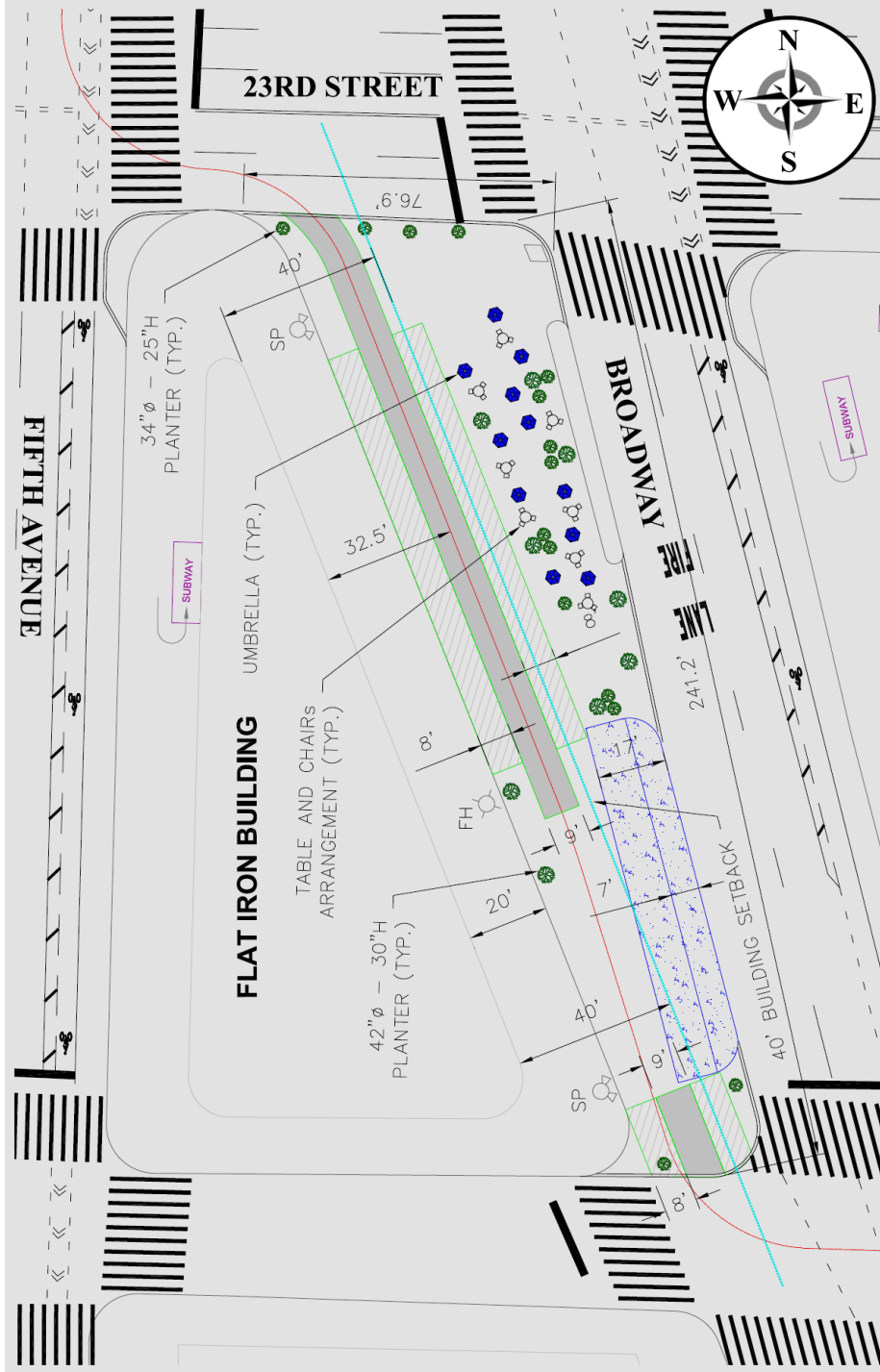
All insurance policies other than Worker's Compensation, Employer's Liability, and Disability Benefits Insurance must name the BID and the City of New York, its officials, employees and agents, as an additional insured with coverage at least as broad as Insurance Services Office (ISO) Form CG 0001 and ISO Form CG 20 26 (11/84 ed.). The BID reserves the right to require higher liability limits and other terms, if warranted.

4. The successful Proposer shall indemnify and hold harmless the BID and the City/DOT with respect to the operation of the Subconcession.

5. 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 BID. 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 Subconcession and the successful Proposer's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

ATTACHMENT A

PLAZA MAP



ATTACHMENT B
NEIGHBORHOOD MAP



ATTACHMENT C

SELECT TERMS AND CONDITIONS INCLUDED IN THE LICENSE AGREEMENT PERTAINING TO THE SUBCONCESSION

6. SUBCONCESSION(S)

A. FLATIRON BID 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 FLATIRON BID.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and FLATIRON BID 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. FLATIRON BID 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 FLATIRON BID 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 FLATIRON BID's written request for approval.

F. FLATIRON BID 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. FLATIRON BID 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. FLATIRON BID and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. FLATIRON BID 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 condition, consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. FLATIRON BID shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for FLATIRON BID's approval. The information submitted to and approved by FLATIRON BID 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. FLATIRON BID 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. FLATIRON BID 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, FLATIRON BID 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, FLATIRON BID shall require its subconcessionaire(s) to submit to FLATIRON BID such statement of Revenue on a monthly basis.

(1) FLATIRON BID 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 FLATIRON BID by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

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

(3) FLATIRON BID 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. FLATIRON BID 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) FLATIRON BID 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) FLATIRON BID 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. FLATIRON BID 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 FLATIRON BID shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. FLATIRON BID shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

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

I. FLATIRON BID 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. FLATIRON BID 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. FLATIRON BID 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 FLATIRON BID or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT.

M. FLATIRON BID 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. FLATIRON BID 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. FLATIRON BID 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 FLATIRON BID's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if FLATIRON BID 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 FLATIRON BID'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. FLATIRON BID 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, FLATIRON BID 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. FLATIRON BID 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) FLATIRON BID, 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. FLATIRON BID 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, FLATIRON BID 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 FLATIRON BID or its subconcessionaire(s).

(2) FLATIRON BID 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) FLATIRON BID 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) FLATIRON BID 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, FLATIRON BID 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, FLATIRON BID 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 FLATIRON BID or its subconcessionaire(s). Notwithstanding the foregoing, in the event of such damage, loss, or injury, FLATIRON BID 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 FLATIRON BID or its subconcessionaire(s), and with DOT's prior written approval. FLATIRON BID shall not apply any Revenue to any such replacement.

(6) FLATIRON BID 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. FLATIRON BID 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) FLATIRON BID 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 FLATIRON BID. After such inspection, DOT and FLATIRON BID shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. FLATIRON BID shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by DOT.

(9) In the event that FLATIRON BID 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) FLATIRON BID shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) during such construction. FLATIRON BID 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 FLATIRON BID.

(11) FLATIRON BID 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) FLATIRON BID shall keep DOT fully informed of FLATIRON BID's progress in the construction of the Subconcession(s).

(13) All risks of construction of the Subconcession(s) are hereby expressly assumed by FLATIRON BID except as may be specifically provided otherwise herein. The Subconcession(s) will be designed, constructed, maintained, secured and insured entirely at FLATIRON BID's expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and FLATIRON BID 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 FLATIRON BID 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.