

**CITY OF NORTH MIAMI
CONCESSION AGREEMENT
WITH
MC SPENCE GROUP, LLC
D/B/A SMOOTHIE EXPRESS MIAMI SHORES**

THIS CONCESSION AGREEMENT (“Agreement”) is made and entered into on _____, by and between the **City of North Miami**, a Florida municipal corporation with a principal address of 776 NE 125th Street, North Miami, Florida (hereinafter referred to as “City”), and **MC Spence Group, LLC d/b/a Smoothie Express Miami Shores**, a Florida limited liability company having its principal office at 9440 NE 2nd Avenue, Miami Shores, FL 33188 (hereinafter referred to as “Concessionaire” or “Vendor”). The City and Concessionaire shall collectively be referred to as the “Parties”, and each may individually be referred to as a “Party”.

RECITALS

WHEREAS, on April 6, 2021, the City of North Miami (“City”) issued ***Request for Proposals #30-20-21 – Operation and Management of the North Miami Library Café Space*** (“RFP”) requesting proposals from qualified firms, corporations, joint ventures, partnerships, individuals or other legal entities to enter into an exclusive Lease Agreement for the management and operation of the Café Space located in the North Miami Library, in accordance with the terms, conditions and specifications contained in the RFP (“Services”); and

WHEREAS, in response to the RFP, Concessionaire submitted its proposal and was competitively selected by City administration as the most experienced and qualified respondent, with qualifications and references demonstrating to be the most advantageous to the City in the provision of Services; and

WHEREAS, the Concessionaire manifested the capability and willingness of providing Services to the City, in accordance with the terms, conditions and specifications contained in the Contract Documents; and

WHEREAS, on August 24, 2021, the Mayor and City Council passed and adopted Resolution No.2021-R-108, authorizing the City Manager to execute this Agreement for the provision of Services, for the general benefit and convenience of City residents and the attending public.

NOW THEREFORE, in consideration of the mutual terms and conditions set forth herein and other good and valuable consideration, the Parties hereto agree as follows:

ARTICLE 1 – RECITALS

1.1 The recitals are true and correct and are hereby incorporated into and made a part of this Agreement.

ARTICLE 2 - DEFINITIONS

2.1 The following words, terms and phrases, when used in this Agreement, shall have the following meanings, except when it is clear from the context that another meaning is intended:

Agreement – this written Agreement between the City and Concessionaire covering the Services to be performed, including the Contract Documents that are attached to or incorporated herein.

Concession Area - means all food and refreshment stands and vending areas in the interior of the Location. “Concession Area” does not mean the Location office spaces, City’s office spaces, City’s operations spaces or any adjacent areas outside the confines of the Location.

Concession Products - means all food, nonalcoholic beverages, pastries and other café refreshments with an emphasis on healthy choices, which the City directs or allows the Concessionaire to sell to patrons of the Location pursuant to this Agreement.

Concession - means the sale of Concession Products (hereinafter defined) in the Concession Area (hereinafter defined) to patrons of the Location, and all operations necessarily incidental to such sale in accordance with the provisions of this Agreement.

Contract Documents – shall consist of the RFP and all corresponding amendments; Concessionaire’s response to the RFP (“Proposal”); Resolution No. 2021-R-108; City’s Proposal tabulation; City’s Recommendation of Award; Certificates of Insurance; copies of current licenses and permits; any additional documents which are required to be submitted under this Agreement; and all amendments, modifications and supplements issued on or after the effective date of this Agreement. Contract Documents are hereby incorporated into and made part of this Agreement. Nothing contained in the Contract Documents shall be construed to create a contractual relationship of any kind: 1) between the City and a Subcontractor or supplier, or 2) between any persons or entities other than the City and Concessionaire.

Day – shall mean a consecutive “calendar day,” unless specifically designated otherwise.

Gross Receipts/Sales - means all moneys received by, or due to, the Concessionaire for sales made or services rendered at or from the Concession, or from any other source related directly or indirectly to the Concession, including catering and merchandising revenues (“Merchandising Revenues”), and revenues from Subcontractor items, whether collected or uncollected, for cash or for credit. Gross Receipts includes all moneys from any sales by Concessionaire’s employees or any others acting on behalf of Concessionaire, provided however, that any sales taxes imposed by local or federal law which are separate to, and paid by, purchaser of any item sold by the Concessionaire or any other authorized service or activity of the Concessionaire and directly payable to a taxing authority shall be excluded from the computation of “Gross Receipts.” Gross Receipts shall be computed prior to any deduction for “spoilage” or “shortage.” Inventory disappearances or shrinkage’s up to a maximum of one percent (1%) of Gross Receipts are excluded from the “Gross Receipts” provided, that any such inventory disappearances or shrinkage’s must be immediately reported to the City. Gross Receipts also includes all amounts received by the Concessionaire from sales made by Subcontractors. Gross Receipts shall be maintained for accounting purposes in a segregated account acceptable to the City.

Location - means the E. May Avil North Miami Public Library, located at 835 Northeast 132nd Street, North Miami, Florida 33161 (“Library”).

Manager - means the City Manager or his/her designee, or any other person designated by the City Manager in writing.

Permitting Authority – means (in its singular or plural forms) the City of North Miami, Miami-Dade County, the State of Florida, and/or any other governmental body having jurisdiction over the Services.

Services – means the act of providing Café operations that include, but are not limited to providing quality menu items and experiences for patrons, activating the site with commercial activity, implementing a quality marketing campaign, and working with Library staff to ensure a quality experience.

Subcontractors - means a Party, person or entity retained by the Concessionaire necessary to complete specific portions of Services.

User - means any person or persons, group or groups, other than the City, who use any or all portions of the Location.

ARTICLE 3 - LICENSE GRANTED

3.1 The City hereby grants to the Concessionaire, and the Concessionaire hereby accepts from the City, the exclusive right and privilege to operate the Concession in the Concession Area in accordance with the terms and provisions set forth herein. The license herein granted is also referred to herein as the “Concession”. The Concessionaire agrees to operate the Concession in accordance with, and perform all of the Services and assume all of the obligations set forth in, the Proposal, as supplemented or amended in this Agreement.

3.2 The Concession hereby granted shall apply to all events conducted at the Location during the term of this Agreement.

3.3 Execution of this Agreement is a representation that the Concessionaire has carefully examined the Contract Documents and the site, and represents that the Concessionaire is thoroughly familiar with the Location, the specific conditions under which the Services are to be performed, and all matters which may in any way affect the Services or its performance. The Concessionaire further represents that, as a result of such examinations and investigations, Concessionaire thoroughly understands the Contract Documents and their intent and purpose, and is familiar with all applicable codes, ordinances, laws, regulations and rules as they apply to the Services, and that Concessionaire will abide by same.

3.4 The Concession herein granted also grants the Concessionaire the right to sell items from Subcontractors. In such event the Concessionaire shall be fully responsible for the Subcontractor’s performance hereunder.

3.5 Concessionaire shall communicate regularly with the designated Library management to provide updates regarding the Services performed and any problems or issues. Concessionaire shall correct the deficiencies within forty-eight (48) hours after being notified by Library management.

ARTICLE 4 - TERM

4.1 The initial term of the Agreement shall be for two (2) years with the first six (6) months being a trial period. If the Services provided by the Concessionaire are satisfactory, as determined by the City Manager at the conclusion of the six-month trial period, the Agreement term will then continue through the expiration of the initial term, unless otherwise terminated by the City Manager with or without cause. This Agreement shall remain in effect for the entirety of the initial term; provided that the Services rendered by the Concessionaire during the Agreement period are satisfactory. In the event Services are scheduled to end because of the expiration of this Agreement, the Concessionaire shall continue to provide Services upon the request of the City Manager.

4.2 The City Manager reserves the right to renew the Agreement in writing and upon the same pricing, terms, and conditions at the expiration of the initial term for three (3) additional, one-year periods, except as otherwise provided herein.

4.3 Notwithstanding the provisions of this Article 4, this Agreement may be terminated by the City Manager at any time, with or without cause.

ARTICLE 5 – CONSIDERATION

5.1 In consideration for the concession privileges herein granted, the Concessionaire shall timely pay the City a monthly fee of Seven Hundred Eighty-Seven Dollars and Fifty Cents (\$787.50); and a monthly fee consisting of a percentage of monthly Gross Sales (collectively referred to herein as “Fee”). The cut-off date for payment is the close of the last business day of the month. Concessionaire shall also submit by the agreed upon date of the following month (due date) Concessionaire’s completed Statement of Sales along with the monthly payment and percentage of sales. Should the agreed upon date fall on a weekend or holiday, Concessionaire shall submit his payment and Statement of Sales on the next workday.

5.2 Payment of percentage of Gross Sales will not be required for the first eight (8) months of the initial term, Statements of Sales must still be provided during this time. At the conclusion of the eighth (8th) contract month, performance will be reviewed by the Vendor and a revenue sharing proposal shall be submitted to the City within five (5) business days of the start of the ninth (9th) contract month. Payment of percentage of Gross Sales shall be effective on month nine (9) of the contract. In the event, the City and the Vendor are unable to agree on a the percentage amount of gross sales prior to the conclusion of the ninth (9th) contract month, the payment of percentage of gross sales shall be paid on a retroactive basis upon the approval of a proposal by both Parties. Payment of percentage of Gross Sales fees are payable when the monthly fee is due. Should the agreed upon date fall on a weekend or holiday, Concessionaire shall submit his payment and Statement of Sales on the next workday.

5.3 Payment of rental fees will not be required for the first three (3) months from the date of opening. Café must be open to the public within three (3) months from the date of award. The

actual date of opening must be agreed upon in writing by both parties. Failure to open within the requisite time period is considered a material breach of the Agreement.

5.4 The agreed upon Fee will be payable in monthly installments and will be payable to the City of North Miami by the Concessionaire in consideration for the use of Location and being allowed to operate the café for the provision of Services.

5.5 The Fee includes the right to use the café space, the existing utilities, and the outdoor patio area. The Concessionaire's staff will be allowed to park in the Library Staff Parking Lot.

ARTICLE 6 - ACCOUNTING AND FISCAL CONTROLS

6.1 Vendor shall furnish a complete and accurate sales report, copies of supporting invoices/billings (such as menu and other pricing, guest counts and related data) and copies of any Subcontractor billing and/or commission statement applicable to User events upon payment of the monthly fee. The Vendor shall maintain accurate books, records, documents, and other evidence directly related to performance of Services under the Agreement in accordance with generally accepted accounting principles and practices consistently applied. The Vendor shall also maintain the financial information used by the Vendor in the submission or preparation of any sales report, statement or summary submitted to the Library or any funding agency.

6.2 The City Manager shall, until the expiration of two (2) years after final payment under the Agreement, have access to and the right to examine, inspect, audit, and copy directly pertinent books, documents, papers and records of the Vendor which involve any transaction directly related to the Agreement. The periods of access and examination described herein shall continue until any disputes, claims, or litigation arising out of the performance of this Agreement has been resolved.

ARTICLE 7 – SCOPE OF SERVICES

7.1 The Concessionaire shall repair and maintain, at his own cost and expense, all Concession equipment and furnishings needed to conduct Concessionaire's operation according to reasonable standards acceptable to the City. At the expiration of this Agreement, Concessionaire shall leave the Concession Area in at least the same condition, as of the time of commencement of this Agreement, normal wear and tear excepted. Further, the Concessionaire will furnish, at its own cost and expense, all expendable equipment necessary to the successful operation of the Concession and shall replace at its own expense any equipment provided under the Agreement which has been destroyed, damaged or become inoperable due to normal wear and tear, with like equipment. The City will maintain the below ground level connection lines for water and sewer utilities during the term of this Agreement. Concessionaire will furnish and maintain all fire equipment in all concession stands and vending areas as required by the Miami Dade County Fire Department.

7.2 While there is no cooking allowed on site, Vendor will be able to use on-site heating devices such as microwaves, convection ovens, warming devices, sandwich presses and other similar utensils. However, if they are electric they will be required to have dedicated electrical service to them and meet certain requirements about wall finishes, etc. All food preparation and warming practices are subject to permit approval.

7.3 The Concessionaire is responsible for keeping the café area clean, neat and in a safe and sanitary condition by immediately cleaning up all spills and messes in area. Trash will be handled in a safe and controlled manner to avoid spills and leaking containers. The Vendor will not allow boxes, cartons, barrels, carts or other similar items to remain in public areas. The City will provide all garbage, trash, and rubbish receptacles within the confines of the café area. The Vendor will be able to utilize the dumpster provided by the City. Dumping of such receptacles and the removal of trash, rubbish and garbage from Concession Area shall be the responsibility of the Concessionaire.

7.4 The Concessionaire shall be responsible for usual and customary cleaning and sanitation of the internal serving area, kitchen including fixtures and equipment and common dining area. Concessionaire shall be responsible for housekeeping and sanitation in the food preparation, storage and internal serving areas; shall clean the tops of tables and chairs in the dining area and bus tables during the normal course of business and shall transport refuse to the refuse collection area.

7.5 The Concessionaire shall maintain clean, dry floors in the food preparation and service areas at all times and clean up spills in the dining areas as required.

7.6 The Concessionaire is required to maintain and comply with the proper health and sanitation standards, requirements and regulations in order to maintain a high level of customer service. Sanitation grades, less than grade A, will be unacceptable and negligence to sanitation will result in Agreement default on the Concessionaire's behalf. Concessionaire shall remedy the default within 24 hours.

7.7 The City shall not be responsible for any goods, merchandise or equipment stored at the location; nor, will it be responsible for damage resulting from a power failure, hurricane, tornado, flood, fire, explosion and/or other causes. Concessionaire shall not maintain, keep or erect any structure or equipment or make any alterations or additions to the location without the City Manager's prior express written permission.

7.8 The City shall provide utilities to the Vendor where and whenever applicable, at no additional charge, which includes electricity, water, solid waste disposal and sewer service.

7.9 The City and the Concessionaire agree that prior to the beginning of each Agreement renewal a representative of the Parties hereto shall inspect the equipment used in the operation of the Concession, whether owned by the City or Concessionaire. Should the City reasonably determine that equipment is in need of replacement, then Concessionaire shall, at its sole cost and expense, provide such replacements.

7.10 The Concessionaire shall pick up, clean up and dispose of all litter for all space assigned or used in its operations. The Concessionaire shall also clean and keep Concession Area free of debris.

7.11 The Library will provide and be responsible for the interior library area adjacent to the café including vestibule and public restrooms and free Wi-Fi access to all customers of the concession at no cost to the Vendor.

7.12 The Concessionaire shall comply with and observe all federal, state and local laws, ordinance and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operation under this Agreement.

7.13 All unusable materials and debris shall be removed from the premises at the end of each workday, and disposed of in an appropriate manner. The Concessionaire shall be responsible for keeping the café area neat and in a safe and sanitary condition by bussing the seating areas, immediately cleaning up all spills and messes in that area.

7.14 Concessionaire shall be responsible for costs incurred for pest control and other outside services required to correct any problems that may arise to the nature of the business.

ARTICLE 8 - SPECIAL EVENTS

8.1 Special events will be treated on a case by case basis subject to the direction of the Library Director. The City may assign special events to the Vendor. The City Manager reserves the right to utilize any other vendor or vendors for special events, as may be in the best interest of the City.

8.2 The Vendor will identify the City for any Subcontractors it will use when providing food and refreshment Services to be served for meetings and events at the Library.

8.3 The Vendor will be responsible for set-up, tear-down, as well as cleaning, providing utensils, supplies, containers, and linens as required as well as equipment needs and any environmental or material requests necessary for the provision of food and refreshment service to those requesting such Services to be provided.

ARTICLE 9 - PERSONNEL

9.1 The Concessionaire will be responsible for hiring staff for the daily operation of the café, providing a good working environment for their employees, and will comply with all federal, state, and local laws related to minimum wage, social security, nondiscrimination, Americans with Disabilities Act (“ADA”) and unemployment compensation.

9.2 Compliance with Jessica Lunsford Act. In accordance with the requirements of Sections 435.04 and 435.05, Florida Statutes (2020), the Concessionaire agrees that all of its employees who provide or may provide services under this Agreement have completed all background screening requirements as outlined in the above-referenced statutes. The Concessionaire agrees to bear any and all costs associated with acquiring the required background screenings.

9.2.1 Concessionaire agrees to provide the City with a list of all of its employees who completed background screening, as required by the above-referenced statutes and meet the statutory requirements contained therein. The Concessionaire agrees that it has an ongoing duty to maintain and update this list as new employees are hired and in the event that any previously screened employee fails to meet the statutory standards. The Concessionaire further agrees to notify the City immediately upon becoming aware that one of its employees, who was previously certified as completing the background check and meeting the statutory standards, is subsequently arrested or convicted of any disqualifying offense.

9.2.2 The Parties further agree that failure by the City to perform any of the duties described in this Section shall constitute a material breach of this Agreement entitling the City to immediately pursue such remedies at law or in equity as to which the City may be entitled under the laws of the State of Florida.

9.3 If required by the City Manager, employees shall wear a uniform and/or identification badge. The Concessionaire and all personnel employed by them shall be required, at Concessionaire's sole cost and expense, to pass a criminal background check through the City of North Miami Police Department prior to award of the Agreement, and on every renewal term. Any employee not meeting this requirement will not be permitted on the Location. Results from the background check must be provided to the contract administrator.

9.4 The City Manager reserves the right to request without justification that the selected Vendor reassign any personnel whom, in the judgment of the Library, are unqualified or unsuitable to perform the required Services.

9.5 By an appropriate written agreement, the Concessionaire shall require that each Subcontractor, to the extent of the Services to be performed by the Subcontractor, be bound to the Concessionaire to the terms of the Contract Documents, and to assume toward the Concessionaire all the obligations and responsibilities which the Concessionaire by these Contract Documents, assumes towards the City. Said agreements shall preserve and protect the rights of the City under the Contract Documents with respect to Services performed by the Subcontractor so that the subcontracting thereof will not prejudice such rights.

9.6 The Concessionaire shall make available to each proposed Subcontractor, prior to the execution of a subcontract, copies of the Contract Documents to which the Subcontractor will be bound to.

9.7 Subcontractors' exclusive remedy for delays in the performance of the Agreement caused by Force Majeure events or by delays claimed to be caused by the City, or attributable to the City, or on claims based on breach of contract or negligence, shall be limited to an extension of its subcontract time.

9.8 Concessionaire shall be responsible to the City for the acts and omissions of its employees, agents and Subcontractors, their agents and employees, and all other persons performing any services or supplying materials and goods under a contract with the Concessionaire.

ARTICLE 10 – LABOR, MATERIALS AND EQUIPMENT SUPPLIED BY VENDOR

10.1 Unless otherwise provided in this Agreement, the Concessionaire shall furnish the labor, materials, equipment (all tables, chairs, cooling units, heating units, etc.) and coordination of Services for satisfactory performance of the Agreement. With respect to the facility/equipment supplied by the Library, the City makes no implied or express warranties, including, but not limited to, the warranties of merchantability or fitness for a particular purpose. The Vendor will provide all seating for the café interior and outside plaza, cash register, display menu, paper goods, lids for

all drinks served in a cup, plastic ware and labels on food marked with the date and time food was prepared.

10.2 Maximum of outdoor seating will be determined jointly by Vendor and Library Director, and approved by the City according to exterior landscaping layout. The interior seating is limited to no more than ten (10) customers at a time due to the small space. Additional seating is also available in the vestibule area of the library.

ARTICLE 11 – PROHIBITED FOOD PACKAGING & ARTICLES

Pursuant to section 7-201 of the City Code, City contractors shall not sell, use, provide in, or offer the use of expanded polystyrene food service articles or single-use plastic beverage straws in city facilities or properties. The Concessionaire shall not sell food, beverages or any other merchandise in glass containers, expanded polystyrene, or in such other containers that may pose a risk or hazard to the safety of the customers in the Location.

ARTICLE 12 - MARKETING

12.1 The Vendor should create marketing strategies or plans Vendor would use to promote library cafe business. The Vendor may work together with the Library to market these initiatives.

12.2 The number, size, wording, location, material and method of installing advertising signs shall be subject to the approval of the Library Director.

12.3 The Concessionaire shall not use or permit product brand identification on cups, trays, or advertising displays in the Location without the expressed prior approval of the City Manager, but such product brand identifications will be encouraged if there is a benefit to the City as determined by the City.

ARTICLE 13 - LICENSES AND TAXES

13.1 Concessionaire shall be properly registered, in compliance and licensed with the Department of Business and Professional Regulation to do business in the State of Florida.

13.2 The Concessionaire shall be responsible for providing and requiring food handler certificates, Florida licenses and/or medical examinations as required by law and will make such records available for Library's review. The Concessionaire will be responsible for securing and maintaining, and shall identify all licenses, permits and certificates held by Concessionaire and required to operate the café and provide food and refreshment. Concessionaire shall display these licenses and certificates in accordance with all pertinent rules, regulations, and statutes.

13.3 Concessionaire represents and warrants that it currently has, and at all times during the term hereof shall maintain, all licenses, permits and certificates required for the full and proper performance of this Agreement.

13.4 The Concessionaire specifically agrees to conform to the terms and provisions of the applicable Retailers Occupational Tax Law and to pay to the State of Florida, promptly when due, all taxes assessed against the Concessionaire or the City by the State of Florida. Concessionaire agrees to include the State Sales Tax in all the advertised prices. Concessionaire further agrees to pay promptly all taxes imposed in connection with its performance under this Agreement.

13.5 The Concessionaire shall pay all social security, unemployment insurance, old age retirement and other federal and state taxes which are measured by the wages, salaries or other remuneration paid to persons employed by Concessionaire.

13.6 Damages, penalties and or fines imposed on the City or the Concessionaire for failure to obtain required licenses, permits or fines shall be borne by the Concessionaire.

ARTICLE 14 - HOURS/DAYS OF OPERATION

14.1 Library Hours are as follows:

Monday-Friday	11:00 A.M. – 5:00 P.M.
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These hours are subject to change as the City continues to assess developments related to the COVID-19 pandemic and recommendations from health officials.

The Vendor will be expected to keep their business open during Library hours and shall have the option to remain open beyond these hours.

14.2 Subject to authorized adjustments, the Library will be closed on the following holidays, each year:

- New Year's Day
- Martin Luther King Jr's Birthday
- President's Day
- Easter
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Christmas Day
- New Year's Day

14.3 The library will allow access to the restroom adjacent to the café space for use during non-library hours provided that the Vendor can block off access to the Library building to the satisfaction of the Library Director. Costs to block access to the Library will be the responsibility of the Vendor. The restroom will be used as a unisex restroom after hours and will be treated as a single restroom facility allowing one person at a time to have access to the restroom.

14.4 The Library is open to the general public. The Café will be accessible through the Library entrance area as well as through an independent access door. This will allow the Café to remain open during non-library hours, with the consent of the Library Director.

14.5 Concessionaire shall use the Library delivery door for deliveries. Trucks making deliveries for the café will not block or impede library vehicles and library deliveries. The Library will not accept deliveries for the café nor will they assume responsibility for any products left in the staff workroom area.

ARTICLE 15 - SAFETY AND SECURITY

15.1 In regards to the café area, the Vendor is responsible for the safety of customers, staff and all participants.

15.2 The City of North Miami Police patrols City facilities with respect to criminal activities. Vendor is responsible for ensuring all safety precautions relating to the provision of Services at the café area. Vendor shall provide security measures, which may be required to protect café area, equipment, materials and facilities. The Library is not responsible for damage, loss, or theft of the café facility.

ARTICLE 16 – ALTERATIONS

During the term of the contract, the Vendor can, at their own expense, recommend any alterations to the Café Space as required to conduct business. Any proposed improvements to the Site shall be subject to the following:

16.1 The Vendor shall make no improvements or modifications to the Site without the prior written consent of the City. Before commencing any improvements or modifications, the Vendor shall submit detailed plans to the City for approval and shall secure, if applicable, all necessary permits and approvals from appropriate regulatory agencies.

16.2 All improvements and modifications made by the Vendor that become fixtures to the Site shall become property of the City, at no cost to the City, upon the expiration or termination of the Contract.

16.3 The City shall have no obligation to repair, maintain or restore any improvements placed upon the Site by the Vendor.

ARTICLE 17 - INDEMNIFICATION

17.1 Concessionaire shall defend, indemnify and hold harmless the City, its officers and employees from and against any and all claims, costs, losses and damages including, but not limited to reasonable attorney's fees, caused by the negligent acts or omissions of the

Concessionaire, its officers, directors, agents, partners, Subcontractors, employees and managers in the performance of Services under this Agreement.

17.2 Concessionaire shall be fully responsible to City for all acts and omissions of the Concessionaire, its employees, Subcontractors, suppliers, or other persons directly or indirectly employed by its Subcontractors or suppliers, and any other persons or organizations performing or furnishing supplies under a direct or indirect agreement with Concessionaire. Nothing in the Contract Documents shall create any contractual relationship between City and any such Subcontractor, supplier or other person or organization, nor shall it create any obligation on the part of City to pay or to cause the payment of any money due any Subcontractor, supplier, employee or agent except as may otherwise be required by law.

17.3 Concessionaire shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the City, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may ensue thereon.

17.4 Concessionaire expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by Concessionaire shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City or its officers, employees, agents and instrumentalities as herein provided.

17.5 Concessionaire has visited the Location and is familiar with the local conditions under which the Services are to be performed, and relieves the City from any liability in regard to any matter not immediately brought to the attention of the City.

17.6 Nothing contained in this Agreement is any way intended to be a waiver of the limitation placed upon the City's liability as set forth in Chapter 768, Florida Statutes (2015). Additionally, the City does not waive sovereign immunity, and no claim or award against the City shall include attorney's fees, investigative costs or pre-judgment interest.

ARTICLE 18 - INSURANCE

18.1 Concessionaire must have proof of insurance meeting or exceeding the following coverage or a letter of intent to provide the following requirements:

18.1.1 COMMERCIAL GENERAL LIABILITY

Minimum limit of \$1 Million per occurrence/\$2Million aggregate for bodily injury and property damage; this coverage shall also include personal, advertising injury and medical expense and products completed operations (redefined with endorsement CG 24-07)

18.1.2 COMMERCIAL AUTOMOBILE LIABILITY

Minimum limit of one (1) Million Dollars, covering any auto including owned, non-owned, hired or leased. In the event Concessionaire owns no automobiles, the Commercial Auto Liability requirement shall be amended allowing Concessionaire to maintain only Hired & Non-Owned Auto Liability. If vehicles are acquired throughout the term of the Agreement, Concessionaire agrees to purchase "Owned Auto" coverage as of the date of acquisition.

This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or a separate Commercial Auto coverage form.

18.1.3 WORKER'S COMPENSATION

As required by the State of Florida and in accordance to F.S.440, with statutory limits, and Employer's Liability with a minimum limit of \$1,000,000 per accident for bodily injury or disease.

18.1.4 Both Commercial General and Automobile Liability insurance policies shall name the City of North Miami as "additional insured". All insurance required herein shall be written as primary policies, not contributing to or in excess of any coverage that the City may carry.

18.2 Insurance policies required by Agreement shall be maintained in full force and effect throughout the term period. The insurance carriers shall have a minimum of B+ rating based on the latest rating publication for Property and Casualty Insurers such as A.M. Best Company (or its equivalent). All insurers must be lawfully admitted to conduct business within the State of Florida. Required insurance coverage must be approved by the City's Risk Manager prior to signing of Agreement. Concessionaire may produce any insurance under a "blanket" or "umbrella" insurance policy, provided that such policy or a certificate of such policy specify the amount(s) of the total insurance allocated to this Agreement. Coverage limits shall equal or exceed the amount(s) required by this Agreement and shall not be reduced for claims made on other projects undertaken by Concessionaire.

18.3 Concessionaire shall guarantee all required insurances (including endorsements) remain current and in effect throughout the term of Agreement. Failure to maintain the required insurance shall be considered default of the Agreement. The requirements contained herein, as well as the City Manager's review or acceptance of insurance maintained by the Concessionaire, are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Concessionaire under the Agreement.

18.4 The Concessionaire must submit, no later than ten (10) Days after award and prior to execution of Agreement, a Certificate of Insurance evidencing all required coverage and naming the City of North Miami as additional insured where applicable.

ARTICLE 19 - OWNERSHIP OF DOCUMENTS

19.1 All documents developed by Concessionaire under this Agreement shall be delivered to the City by the Concessionaire upon completion of the Services and shall become property of the City, without restriction or limitation of its use. The Concessionaire agrees that all documents generated hereto shall be subject to the applicable provisions of the Public Records Law, under Chapter 119, Florida Statutes.

19.2 It is further understood by and between the Parties that any information, writings, tapes, Contract Documents, reports or any other matter whatsoever which is given by the City to the Concessionaire pursuant to this Agreement shall at all times remain the property of the City and shall

not be used by the Concessionaire for any other purposes whatsoever without the written consent of the City.

19.3 In the event the Agreement is terminated, Concessionaire agrees to provide the City all such documents within ten (10) Days from the date the Agreement is terminated.

ARTICLE 20 – DEFAULT

20.1 If Concessionaire fails to comply with any term or condition of this Agreement, or fails to perform any of its obligations hereunder, then Concessionaire shall be in default. Upon the occurrence of a default hereunder, the City shall have all remedies available to it by law.

20.2 If in the opinion of the City Manager's representative, the Concessionaire refuses to execute contractual obligations as outlined in the Agreement, produces an unsatisfactory performance, or neglects or refuses to address the deficit to provide a suitable resolution that meets the City Manager's expectations, then City Manager's representative may notify the Concessionaire that the City Manager will terminate the Agreement.

20.3 In the event the City defaults in the performance of any of the provisions of this Agreement, Concessionaire may give the City written notice of such default. If the City fails to cure said default within thirty (30) Days after written notice was given, or make reasonable progress to cure said default, then Concessionaire may terminate this Agreement.

ARTICLE 21 – SURRENDER OF PREMISES

Upon the expiration or termination of this Agreement, Vendor's right to occupy the Property and exercise the privileges and rights herein granted shall cease, and Vendor shall surrender the same, and leave the Property in good condition, normal wear and tear excepted. Unless otherwise provided herein, all trade fixtures, equipment and other personal property installed or placed by Vendor on the Property shall remain the property of Vendor, and Vendor shall have the right at any time during the term of this Agreement, and for an additional period of ten (10) days after its expiration, to remove the same from the Property; provided that Vendor is not in default of any of its obligations hereunder, that Vendor repairs at its sole cost any damage caused by such removal, and that under no circumstances shall Vendor remove any of the capital improvements required hereunder. Any property not removed by Vendor within said ten (10) day period shall become a part of the Property and ownership thereto shall vest in the City.

ARTICLE 22 - ASSIGNMENT, SUBLEASE

22.1 Concessionaire shall not sublet, transfer, convey, assign nor permit the use of the rights, privileges or premises granted under this Agreement in whole or in part to any other person, firm or corporation without written consent of the City Manager which consent may be withheld, in the City Manager's sole discretion which will not be unreasonable withheld.

ARTICLE 23 - ABANDONMENT

23.1 If Concessionaire vacates or abandons its operations hereunder for a period of twenty (20) Days within a calendar year, and the abandonment continues for a period of seven (7) calendar

Days after written notice thereof is given to Concessionaire by the Manager, the City Manager, at his/her option and without serving notice elsewhere required in this Agreement, may:

23.1.1 Take immediate possession thereof for the remainder of the said term, and, at his/her discretion, re-advertise and solicit proposals for the provision of concession services, with Concessionaire remaining liable for the payments of Minimum Guarantee, and for all other obligations under this Agreement to the same extent as if said abandonment had not taken place; or

23.1.2 Cancel this Agreement, without prejudice to its rights and remedies under applicable laws.

ARTICLE 24 - BUSINESS RECORDS

24.1 The Concessionaire shall maintain complete and accurate books and records reflecting its operations under this Agreement and these shall be open for inspection at reasonable times during the term of this Agreement. The books and records shall include daily sequentially renumbered receiving reports and supporting Vendor documentation indicating description and quantity of goods received: Photocopies of payment checks shall be attached to the invoices; where payment has been made in cash, the person making payment to the Concessionaire shall sign the applicable invoice acknowledging the amount paid.

ARTICLE 25 - AUDIT AND INSPECTION RIGHTS

25.1 The City may, at reasonable times, and for a period of up to three (3) years following the date of final payment by Concessionaire to the City under this Agreement, audit, or cause to be audited, those books and records of Concessionaire which are related to Concessionaire's performance under this Agreement. Concessionaire agrees to maintain all such books and records at its principal place of business for a period of three (3) years after final payment is made under this Agreement.

25.2 The City may, at reasonable times during the term hereof, inspect Concessionaire's facilities and perform such tests, as the City deems reasonably necessary, to determine whether the goods or services required to be provided by Concessionaire under this Agreement conform to the terms hereof and/or the terms of the Solicitation Documents, if applicable. Concessionaire shall make available to the City all reasonable facilities and assistance to facilitate the performance of tests or inspections by City representative

ARTICLE 26 – CONFLICTS OF INTEREST

26.1 Concessionaire represents and warrants to the City that it has not employed or retained any person or company employed by the City to solicit or secure this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the award of this Agreement.

26.2 Concessionaire covenants that no person under its employ who presently exercises any functions or responsibilities on behalf of the City in connection with this Agreement has any personal financial interest, directly or indirectly, with contractors or vendors providing professional Services assigned to the Concessionaire, except as fully disclosed and approved by

the City. Concessionaire further covenants that, in the performance of this Agreement, no person having such conflicting interest shall be employed.

ARTICLE 27 - PUBLIC RECORDS

27.1 The Concessionaire shall comply with Section 119.0701, Florida Statutes (2015), including without limitation, the following conditions: (1) keep and maintain public records that ordinarily and necessarily would be required by the City to perform this service; (2) provide the public with access to public records on the same terms and conditions as the City would at the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law; (3) ensure that public records that are exempt or confidential and exempt from disclosure are not disclosed, except as authorized by law; (4) meet all requirements for retaining public records and transfer, at no cost to the City, all public records in its possession upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from disclosure requirements; and (5) all electronically stored public records must be provided to the City in a format compatible with the City's information technology systems.

27.2 Concessionaire's failure or refusal to comply with the provisions of this section shall result in the immediate cancellation of this Agreement by the City.

ARTICLE 28 - COMPLIANCE WITH LAWS, REGULATIONS AND DIRECTIVES

28.1 Concessionaire understands that agreements between private entities and local governments are subject to certain laws and regulations, including laws pertaining to public records, conflict of interest, record keeping, etc. City and Concessionaire agree to comply with and observe all applicable laws, codes and ordinances as the may be amended from time to time.

28.2 Concessionaire will use the subject premises for no purpose other than specified in this Agreement and shall conduct its business and operate the Concession in strict compliance with all applicable laws, including specifically, without limitation, laws, ordinances and regulations pertaining to the operation of food serving establishments and all applicable health and fire codes.

28.3 Concessionaire understands that the City reserves the right in its sole discretion to cancel, interrupt, or terminate any performance, event, public or private gathering upon its premises, whether or not admission has been charged, and to dismiss the audience, or cause the same to be dismissed; and the Concessionaire hereby agrees that it will not make or allow to be made against the City, any claim for damages to the Concessionaire or other party arising out of any acts of the City, its officers, agents, or employees, in the exercise of the City's discretion as aforesaid.

28.4 All areas which are open to the public shall be available for use and enjoyment by the public without regard to race, color, creed, sex, age, national origin, marital status, sexual preference or disability.

28.5 Concessionaire covenants to furnish its best skill and judgment in furthering the interests of the City.

ARTICLE 29 - NONDISCRIMINATION

29.1 Concessionaire represents and warrants to the City that Concessionaire does not and will not engage in discriminatory practices and that there shall be no discrimination in connection with Concessionaire's performance under this Agreement on account of race, color, sex, religion, age, disability, marital status, national origin or sexual preference. Concessionaire further covenants that no otherwise qualified individual shall, solely by reason of his/her race, color, sex, religion, age, disability, marital status, national origin or sexual preference, be excluded from participation in, be denied Services, or be subject to discrimination under any provision of this Agreement.

ARTICLE 30 - NOTICES

30.1 All notices or other communications required under this Agreement shall be in writing and shall be given by hand-delivery or by registered or certified U.S. Mail, return receipt requested, addressed to the other Party at the address indicated herein or to such other address as a Party may designate by notice given as herein provided. Notice shall be deemed given on the Day on which personally delivered; or, if by mail, on the fifth Day after being posted or the date of actual receipt, whichever is earlier.

FOR VENDOR: MC Spence, LLC d/b/a Smoothie Express Miami Shores
Attn: Tashana Spence
9440 NE 2nd Avenue
Miami Shores, FL 33188

TO THE CITY: City of North Miami
Attn: City Manager
776 N.E.125th Street
North Miami, Florida 33161

WITH COPY TO: City of North Miami
Attn: City Attorney
776 N.E.125th Street
North Miami, Florida 33161

30.2 Either Party may at any time designate a different address and/or contact person by giving notice as provided above to the other Party. Such notices shall be deemed given upon receipt by the addressee.

30.3 In the event there is a change of address and the moving Party fails to provide notice to the other Party, then notice sent as provided in this Article shall constitute adequate notice.

ARTICLE 31 - INDEPENDENT CONTRACTOR

31.1 Concessionaire has been procured and is being engaged to provide Services to the City as an independent contractor, and not as an agent or employee of the City. Accordingly, Concessionaire shall not attain, nor be entitled to, any rights or benefits under the Civil Service or Pension Ordinances of the City, nor any rights generally afforded classified or unclassified employees. Concessionaire further understands that Florida Workers' Compensation benefits available to employees of the City are not available to Concessionaire, and agrees to provide

Workers' Compensation Insurance for any employee or agent of Concessionaire rendering Services to the City under this Agreement.

ARTICLE 32 - CONTINGENCY CLAUSE

32.1 Funding for this Agreement is contingent on the availability of funds and continued authorization for program activities and the Agreement is subject to amendment or termination due to lack of funds, reduction of funds and/or change in regulations, upon thirty (30) Days notice.

ARTICLE 33 - REAFFIRMATION OF REPRESENTATIONS

33.1 Vendor hereby reaffirms all of the representations contained in the Solicitation Documents.

ARTICLE 34 - ENTIRE AGREEMENT/ INTERPRETATION/CONFLICT

34.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Services by the Concessionaire. Contract Documents are complimentary, and what is required by any one shall be as binding as if required by all; performance by the Concessionaire shall be required only to the extent consistent with the Contract Documents and reasonable inferable from them as being necessary to produce the intended results.

34.2 Organization of the specifications into divisions, sections and articles shall not control the Concessionaire in dividing the Services among Subcontractors or in establishing the extent of Services to be performed by any trade.

34.3 In the event of any conflict between the Contract Documents or any ambiguity or missing specification or instruction, the following priority is hereby established:

34.3.1 Specific written direction from the City Manager or City Manager's designee.

34.3.2 This Agreement.

34.3.3 The RFP.

34.3.4 The Proposal.

34.4 The Parties agree that Concessionaire is responsible for clarifying any ambiguity, conflict, discrepancy, omission, or other error found in the RFP prior to Concessionaire submitting its Proposal or the right to clarify same shall be waived.

ARTICLE 35 - MISCELLANEOUS PROVISIONS

35.1 This Agreement shall be construed and enforced according to the laws of the State of Florida. Venue in any proceedings between the Parties shall be in Miami-Dade County, Florida.

35.2 No waiver or breach of any provision of this Agreement shall constitute a waiver of any subsequent breach of the same or any other provision hereof, and no waiver shall be effective unless made in writing.

35.3 Should any provision, paragraph, sentence, word or phrase contained in this Agreement be determined by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable under the laws of the State of Florida, such provision, paragraph, sentence, word or phrase shall be deemed modified to the extent necessary in order to conform with such laws, or if not modifiable, then same shall be deemed severable, and in either event, the remaining terms and provisions of this Agreement shall remain unmodified and in full force and effect or limitation of its use.

35.4 This Agreement constitutes the sole and entire agreement between the Parties hereto. No modification or amendment hereto shall be valid unless in writing and executed by properly authorized representatives of the Parties hereto.

35.5 All representations, indemnifications, warranties and guarantees made in, required by, or given in accordance with this Agreement, as well as all continuing obligations indicated in the Contract Documents, shall survive final payment, completion and acceptance of the Services and termination or completion of the Agreement.

35.6 The Concessionaire agrees to comply with and observe all applicable federal, state, and local laws, rules, regulations, codes and ordinances, as they may be amended from time to time.

35.7 Services shall not be subcontracted, transferred, conveyed, or assigned under this Agreement in whole or in part to any other person, firm or corporation without the prior written consent of the City.

35.8 The City of North Miami is exempt from Federal Excise and State taxes. The applicable tax exemption number or certificate shall be made available upon request. Payment of taxes whether state, federal, or local in nature, shall be the responsibility of Concessionaire.

35.9 In any emergency affecting the safety of persons or property, the Concessionaire shall act at its discretion, to prevent threatened damage, injury or loss.

35.10 This Agreement shall be binding upon the Parties hereto, their heirs, executors, legal representatives, successors, or assigns.

35.11 This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The Parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the Parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both Parties hereto or their authorized representatives.

35.12 The Services to be provided by Concessionaire pursuant to this Agreement shall be non-exclusive, and nothing herein shall preclude the City from engaging other firms to perform Services.

35.13 All other terms, conditions and requirements contained in the RFP, which have not been modified by this Agreement, shall remain in full force and effect.

35.14 In the event of any dispute arising under or related to this Agreement, the prevailing Party shall be entitled to recover all actual attorney fees, costs and expenses incurred by it in connection with that dispute and/or the enforcement of this Agreement, including all such actual attorney fees, costs and expenses at all judicial levels, including appeal, until such dispute is resolved with finality.

35.15 This Agreement may be executed in two or more counterparts, each of which shall constitute an original but all of which, when taken together, shall constitute one and the same Agreement.

[The remainder on this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed by their respective officials thereunto duly authorized, this the day and year above written.

ATTEST:

Corporate Secretary or Witness:

MC SPENCE GROUP, LLC
a FLORIDA limited liability company d/b/a
Smoothie Express Miami Shores,
“Concessionaire” or “Vendor”:

By: _____

By: _____

Print Name: _____

Print Name: _____

Date: _____

Date: _____

ATTEST:

City of North Miami, a FLORIDA municipal corporation, **“City”:**

By: _____
VANESSA JOSEPH, ESQ.
CITY CLERK

By: _____
THERESA THERILUS, ESQ.
CITY MANAGER

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
JEFF P. H. CAZEAU
CITY ATTORNEY