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CB 117485

Ned Dunn
CEN Bite of Seattle 2012-14 ORD
April 19, 2012
Version #1

CITY OF SEATTLE

ORDINANCE _____

COUNCIL BILL 117485

AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Festivals, Inc. for the presentation of annual Bite of Seattle festivals at Seattle Center.

BE IT ORDAINED BY THE CITY OF SEATTLE AS FOLLOWS:

Section 1. As requested by the Seattle Center Director and recommended by the Mayor, the Seattle Center Director, or his or her designee, is authorized to execute, for and on behalf of The City of Seattle, an agreement with Festivals, Inc. substantially in the form attached hereto as Attachment 1 and identified as the 'Agreement Between The City of Seattle and Festivals, Inc. Regarding the "Bite of Seattle,"' for purposes related to the presentation of annual Bite of Seattle festivals at Seattle Center from 2012 through 2014.

Section 2. This ordinance shall take effect and be in force 30 days after its approval by the Mayor, but if not approved and returned by the Mayor within ten days after presentation, it shall take effect as provided by Seattle Municipal Code Section 1.04.020.

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Passed by the City Council the ____ day of _____, 2012, and signed by me in open session in authentication of its passage this _____ day of _____, 2012.

_____

President _____of the City Council

Approved by me this ____ day of _____, 2012.

_____

Michael McGinn, Mayor

Filed by me this ____ day of _____, 2012.

_____

Monica Martinez Simmons, City Clerk

(Seal)

Attachment 1: Agreement Between The City of Seattle and Festivals, Inc. Regarding the "Bite of Seattle"

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Attachment 1

AGREEMENT BETWEEN THE CITY OF SEATTLE AND FESTIVALS, INC REGARDING THE "BITE OF SEATTLE"

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AGREEMENT BETWEEN THE CITY OF SEATTLE AND FESTIVALS, INC. REGARDING THE "BITE OF SEATTLE"

THIS AGREEMENT is entered into by and between **THE CITY OF SEATTLE** (hereinafter referred to as the "City"), a first class city of the State of Washington, acting by and through its Seattle Center Director ("Director"), and **FESTIVALS, INC.** ("Concessionaire"), a Washington corporation.

IN CONSIDERATION of the mutual promises, covenants, conditions and performances hereinafter described, the parties hereto agree as follows:

1. TERM

This Agreement shall commence on January 1, 2012, and shall expire on December 31, 2014 (the "Term"), unless terminated earlier as provided herein. Each of the calendar years included in the Term is referred to in this Agreement as a "Festival Year."

2. PURPOSE

Concessionaire shall organize and stage an annual "Bite of Seattle Festival" ("Festival") that shall be presented over not less than two and one-half (2 ½) consecutive days; shall be primarily a food sales event; and shall be open to the general public without admission charge.

For each year during the Term, the Festival shall take place on the following dates:

July 20-22, 2012
July 19-21, 2013
July 18-20, 2014

3. PREMISES

A. <u>Premises Available to be Licensed</u>:

The Festival shall take place only on and in those portions of the Seattle Center grounds and facilities indicated in the Approved Site Plan described in Section 4. The areas identified on each annual Approved Site Plan shall constitute that Festival Year's premises ("Premises").

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Buildings or portions thereof available to be licensed include:

(1) International Fountain Mall; Theater Commons; Mural Amphitheater; Seattle Center Pavilion; Fisher Pavilion and Rooftop; Conference Rooms A, B, E and H; and others listed in this subsection, subject to the terms and conditions set forth herein.

(2) The Vera Project spaces may be used on terms and conditions consistent with and subject to agreement(s) between the City and The Vera Project.

(3) The SIFF screening room spaces may be used on terms and conditions consistent with and subject to agreement(s) between the City and the Seattle International Film Festival Group.

(4) The Skatepark must be available for unimpeded public use during load in and load out days. If Concessionaire desires to restrict public use of the Skatepark, or to utilize the Skatepark for Festival purposes, then Concessionaire must receive prior Approval from the Director.

(5) The Exhibition Hall, Northwest Rooms (and Courtyard), and N50 Pavilion/N50 Plaza may only be used for Festival purposes if they are available.

(6) McCaw Hall spaces may be used at negotiated and agreed upon terms, provided the space is available.

(7) KeyArena concourses may be used for Festival purposes if the space is available.

(8) Additional KeyArena/Festival usage:
   a. Should an event in KeyArena scheduled from the Wednesday immediately preceding the Festival and extending through the close of the Festival on Sunday evening require ticketing capacity that would require use of the east box office, Seattle Center will provide, at its expense, a suitable replacement located outside the Approved site plan footprint.
   b. If there is an event booked in KeyArena either during Festival days or during the Move-in or Move-out times as specified in Section 4.E, then all canopies or structures that may block the East stairs/entrances to KeyArena or the Upper SE/NW doors of KeyArena must have final approval from the Director and from the Fire Marshal based on the ticketed capacity for the event.

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c. On each Festival day, Concessionaire may use the South KeyArena Courtyard on a twenty-four (24) hour-per-day basis for parking purposes only, unless the Courtyard is required by a third party for an event in the KeyArena. When using the Courtyard, Concessionaire shall ensure that all fire lanes remain open for emergency access and that parking is made available at no charge for vehicles driven by officers or employees of the Washington State Liquor Control Board, the Seattle-King County Department of Public Health, and the Seattle Fire Department on official business. If the South KeyArena Courtyard is unavailable, the City shall provide Concessionaire, each Festival day, with up to sixty (60) parking spaces in the 1st Avenue North Garage or other Seattle Center parking facility at no charge.

B. Acceptance of Premises:

Concessionaire warrants and represents that it has investigated the grounds and facilities that may comprise the Premises from year to year, that the same are suitable for Concessionaire's intended purpose and that it accepts the Premises "as is." The City disclaims any and all representations, statements, and warranties, expressed or implied, with respect to the condition of the Premises or the use and occupancy authorized other than those contained in this Agreement.

C. Nonexclusive License to Use Common Areas:

The City hereby grants to Concessionaire and its officers, employees, agents, customers, and invitees the nonexclusive right to use the Seattle Center common areas as the same may be constituted from time to time, for the duration of each Festival. Such use shall be in common with all other visitors and users of the Seattle Center and shall be subject to such current rules and regulations as the Director may have promulgated.

4. CONCESSIONAIRE'S LAYOUT AND OPERATIONS

A. Submission of Planning Documents:

(1) Not later than 180 days prior to opening day in each Festival Year (January 20, 2012, January 19, 2013, January 18, 2014), Concessionaire shall provide the Director with a preliminary site plan identifying Concessionaire's proposed booth layout (including "portable" booth and on-grounds vendor and vehicle locations), special sponsorship exhibits, beer garden(s), required Seattle Center buildings or service facilities, vendor washing facilities,

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special venues and stages. The Director shall review such site plan and provide comments, if any, within twenty (20) days after receipt. Concessionaire shall submit for Approval a further revised site plan incorporating the Director's comments and revisions within ten (10) days from the date of the Director's notice.

(2) Seattle Center and Concessionaire agree to meet at least monthly between February and May of each Festival Year to discuss any layout, site plans, and production and Festival operations, and to resolve any remaining issues to the Director's satisfaction.

(3) Not later than May 31st of each Festival Year, Concessionaire shall provide the Director with a final proposed site plan, which shall be considered the Approved Site Plan so long as it includes the above information as well as the proposed locations for refrigerated trucks, storage trucks and containers, ice supply trucks, all on-grounds vehicles and vendors; every inflated structure or object requiring any form of tether or connection to the ground or any fixed structure or landscaping element; dumpsters; and service areas for Festival plumbers, electricians and/or decorators. All site plans shall conform to the requirements of the then-current Seattle Center Technical Services User Guidelines or any successor publication.

Concessionaire shall make no changes to the final Approved Site Plan unless directed to do so by, or Approved by, the Director. Concessionaire may reposition, reconfigure and/or add booths to accommodate changing market conditions within the Approved Site Plan footprint with the Director's approval.

(4) <u>Security Plan</u>:

By May 31st of each Festival Year, Concessionaire shall submit for Approval, and obtain such Approval of, a Security Plan, detailing how Concessionaire intends to provide protection for its personal property and Seattle Center property during the Festival, including during Move-in and Move-out periods and after-hours.

(5) <u>Mercer Garage Overpass Signage</u>:

By May 15th of each Festival Year, Concessionaire shall submit for Approval the proposed design and size of any banner Concessionaire wishes to have displayed on the Mercer Street Garage overpass for the Festival. If the Mercer Garage overpass is

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unavailable then a mutually agreed upon alternative location will be found to utilize the banner.

Subject to City of Seattle signage requirements, the design and size of said banner shall be deemed to have been approved by the Director unless the Director notifies Concessionaire otherwise within fourteen (14) days after receiving the proposal.

(6) Seattle Center Stage Labor Plan:

No later than a month prior to the Festival opening day or June 15th whichever is later, Concessionaire shall provide Seattle Center with a stage labor plan so that the appropriate and necessary staffing arrangements can be made to accommodate the Move-in, Festival performances, and Move-out.

B. No Representation or Liability Created by Approval:

The Director's Approval of any plans required pursuant to this Agreement shall not constitute an opinion or representation by the City as to their compliance with any law or ordinance or their adequacy for other than the Seattle Center's own purposes. Such Approval shall not create or form the basis of any liability on the part of the City or any of its officers, employees, or agents for any injury or damage resulting from any inadequacy or error therein or any failure to comply with applicable laws or ordinances.

C. Work Inconsistent with Approved Plans:

No improvement, alteration, or addition shall be constructed, placed, or erected on the Premises except in accordance with Approved plans and specifications thereof. Immediately following its receipt of notice from the Director that an improper improvement, addition, or alteration has been erected in, on, or is being made to the Premises, Concessionaire shall either desist from the occupation, use, and operation of such improvement, addition, or alteration and remove it from the Premises, or make it consistent with such Approved plans and specifications within such time period and as otherwise ordered by the Director, whose decision shall be final. If Concessionaire fails to comply with any such order, the City may remove such unauthorized alteration or addition and charge Concessionaire for such removal expense.

Concessionaire waives any and all claims it may have or assert for damages, lost profits and other injuries arising out of or in any way connected with Concessionaire's making an unauthorized improvement,

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alteration or addition on or to the Premises and any resultant City action taken in response thereto.

D. Pre-Festival Meetings At Seattle Center:

Concessionaire and the Event Service Representative assigned to the Festival shall schedule a meeting with the Seattle Center Events and Operations Manager, the Seattle Center Director in charge of the Festival, the Seattle Police and Fire Department liaisons to Seattle Center, and any other City or resident organization representatives whom the City or Concessionaire deems necessary, which meeting shall occur on or before July 1st of each Festival Year. At such meeting, public safety and security staffing, emergency contacts and emergency communication procedures and protocols will be established for the Festival.

Concessionaire may use Conference Rooms A or H, if they are available, for one all-participant meeting during the month of June, at no additional cost.

E. Sequencing of Move-in Activities:

(1) Move-in:

Concessionaire's Move-in activities shall be sequenced in substantially the following order during the week immediately preceding the Friday opening of each Festival; *provided*, that if the Director determines, in such official's sole discretion, that such activity interferes or is likely to interfere with the use and enjoyment of any Seattle Center facility or area leased or licensed for use by a person or entity other than Concessionaire during such week, or with the Seattle Center's ability to provide appropriate service to any such person or entity, Concessionaire shall reschedule such activity to another time specified by the Director:

Saturday-Sunday 8:00 a.m. Based on availability and prior approval the following spaces may be accessible for some Load-in activity: North Fountain Lawn, Covered Walkway, Alki Courtyard, Conference Room H and Mural Roadway. The approval process will follow the above deadlines listed in Section 4.A for site plan approval and are subject to availability.

Monday: 6:00 a.m. The remainder of the Premises included in the Approved Site Plan (except Fisher Pavilion and South Fountain Lawn) and other common areas of the Seattle Center grounds listed in Section 3.A-D, become available for Move-in activities for

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the Concessionaire, subconcessionaires and any other subcontract staff.

Tuesday: 6:00 a.m. Fisher Pavilion and South Fountain Lawn become available.

Wednesday and Thursday: All vendors move in.

Depending on the availability of grounds and/or facilities, as determined by the Director, Concessionaire may book Festival-related events on the grounds or in facilities prior to the opening days of the Festivals, consistent with the requirements and deadlines specified herein as further outlined in this Section. Such event(s) shall occur no earlier than the Monday immediately preceding the Friday opening of such Festival.

(2) Move-out:

Move-out from the grounds and facilities shall be finished by 7:00 p.m. on the first Tuesday following the Festival, except that Move-out from the Fisher Pavilion facility, rooftop and apron shall be finished by 5:00 p.m. on the first Monday following the Festival, if the Director so requests. The Director shall provide the Concessionaire with written notification of such request to move out from the Fisher Pavilion facility, rooftop and apron by 5:00 p.m. on the first Monday following the Festival, no later than twenty (20) days after submittal of the preliminary site plan.

F. City Not Responsible for Concessionaire's Work:

All improvements, additions, and alterations made to the Premises to convert the same to the condition desired by Concessionaire for the operation of its Festival shall be at Concessionaire's sole risk and expense, unless otherwise specifically agreed upon in writing.

G. Extra Charges:

If the Director Approves an improvement, addition, or alteration requested by Concessionaire that requires any change in any facility, utility or service provided by the City, Concessionaire shall pay, as an additional charge, any costs incurred by the City in connection therewith provided that the City notifies Concessionaire of the estimated amount of such charge at the time the improvement, addition or alteration is Approved.

H. Improvements, Additions, and Alterations must be Removed:

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All improvements, additions, and alterations made to the Premises by or on behalf of Concessionaire or any of its subconcessionaires must be removed by 11:59 p.m. on the day following the close of each Festival, unless the Director agrees otherwise. Failure to remove such improvements, additions and alterations may, in the Director's sole discretion, result in an additional charge for costs incurred by the City to accomplish such removal.

I. Giveaways and Samples:

The Director shall approve all sales, giveaways and samples, of food, beverages and other products or merchandise. Any such Approval shall be subject to such conditions as the Director deems appropriate, and the City's limitation of liability set forth in Section 4.B shall apply equally to any such Approval.

5. FEES AND CHARGES PAYABLE TO CITY

A. Concessionaire's Obligation to Pay Fees and Charges:

Concessionaire shall pay to the City, without offset, all fees and charges described in this Agreement for each Festival presented during the Term. Charges and services not specifically enumerated but requested by Concessionaire shall be payable at the rates shown in the then-current Seattle Center Equipment, Services & Facilities Schedule or any successor publication.

B. Fee for Food, Wine and Merchandise Sales:

Concessionaire shall pay the City ten percent (10%) of all Gross Receipts derived from the sale of food, wine, and merchandise, except for receipts from craft and commercial vendors. Concessionaire shall pay the City ten percent (10%) of the vendor fee per booth for each craft vendor and commercial vendor If there is a substantial alteration in the amount of space available for craft and commercial vendor booths as a result of Seattle Center construction or changes in applicable regulations, the above amounts may be renegotiated.

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C. Fee for Beer and Spirits Sales; Sales only in Designated Areas:

Concessionaire shall pay the City twenty percent (20%) for the first $50,000 of Gross Receipts and then fifteen percent (15%) for all Gross Receipts above $50,000 derived from the sale of beer or spirits in the designated beer garden(s) and comedy or dance hall(s) described in each year's Approved Site Plan. Any sale or advertising of spirits (alcohol) must be approved in advance by the Director.

D. Landscape Maintenance Fee:

Concessionaire shall pay an annual fee for basic Festival-related landscape maintenance. For 2012, said fee shall be Thirty-Nine Five Hundred Sixty-Three Dollars ($39,563) and it shall be due and payable as provided in section 5.A.1.

For each subsequent year of this Agreement the Landscape Maintenance Fee shall be adjusted by the percentage increase that occurred during the preceding calendar year in the Consumer Price Index for all Urban Consumers ("CPI-U" / 1982-84 = 100) Seattle-Tacoma-Bremerton Metropolitan Area as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor. If the CPI is discontinued, the Director shall select a similar index of comparable statistics on the cost of living for King County as shall be computed by an agency of the United States or by a responsible financial periodical or other recognized authority. Notwithstanding the foregoing, in no case shall the annual Landscape Maintenance Fee be increased by more than three percent (3%) from the immediately preceding Festival Year, or be less than the fee paid during the immediately preceding Festival Year.

E. Parking:

Concessionaire may purchase daily permits for vehicle parking in one or more Seattle Center parking lots, at a rate to be mutually agreed upon no later than February 28 of each year, at the then-applicable Seattle Center rate for posted daily consumer/public parking. The permits shall be valid only on days that the Festival is open for food and beverage service to the public, and only for vehicles that are no more than nineteen (19) feet long. Use of Seattle Center parking lot(s) shall be on a first come, first served basis.

F. Event Service Order Charges:

Concessionaire shall be billed at and shall pay current Seattle Center rates for the following:

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(1) Dumpster Rental & Disposal Fee:

Rent for dumpsters specifically ordered for Festivals and disposal charges for compacted waste generated by Festivals.

(2) Natural or Liquefied Petroleum Gas Distribution:

All charges for the above-ground distribution of natural or liquefied petroleum gas and for all gas consumption during Festivals, including charges resulting from operation or location changes to Festivals unless the Seattle Center requires such changes.

(3) Electricity Charges:

All fees and charges for electricity use and service provided for Festivals including, but not limited to, special utility equipment such as transformers and converters; the installation, change, and relocation of points and means of service; and a prorated share of electricity use from service connections that are not separately metered but are shared with other Seattle Center users. The City shall determine Concessionaire's prorated share of such utility service and shall bill Concessionaire for such service. Concessionaire shall make arrangements directly with Seattle City Light to secure whatever additional electrical service is needed on the Premises beyond that presently installed at Seattle Center. All electricity use and service shall be separately metered where reasonably possible. The City shall make every reasonable effort to ensure that the electrical power capacity available for Festival use is equal to that available at the 2011 festival, however, if equal electrical power capacity cannot be provided because of any Seattle Center campus redevelopment work, the City and Concessionaire shall equally share the cost of securing whatever power capacity is required to make up the deficiency. If Concessionaire uses electrical power from the Charlotte Martin Theatre, Concessionaire shall reimburse the Theatre for all associated costs within thirty (30) days after the date of the Seattle Children's Theatre's invoice therefor.

(4) Sound and Stage Labor:

All personnel charges for sound and stage staff whenever the Director determines that such staff is required.

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Scaffolding and truck stage companies shall provide no more than two, experienced, company-employed, working supervisors, to work with and direct City stagehands in the placement and construction of truck stages. Scaffolding companies shall provide working supervisors, in an equal amount to the number of City stagehands that are skilled and experienced in scaffolding erection for beer gardens, sound wings and other structures for which the contractor supplies the equipment. Non-skilled workers will not be allowed to work on the erection of any stages or platforms on the Seattle Center Grounds.

(5) Grounds Cleaning:

A disposal fee, established by the Director, to recover the City's expenses (labor, equipment and supplies) in removing grease, ashes and debris left by food or beverage vendors or merchandise retailers in areas of the Seattle Center other than those designated for such purpose. The condition of the Premises shall be verified by photographs and/or video taken prior to the Move-in of each year's Festival and the Tuesday morning immediately following each year's Festival. Designees of the Director and Concessionaire shall jointly inspect the Premises on the Tuesday morning following each year's Festival.

(6) Seattle Center Admissions & Security Personnel & City-Contracted Peer Group Security Personnel:

(a) Concessionaire shall pay for the following personnel whom Seattle Center schedules to perform Festival-related work at any time prior to, during, or following a Festival:

(i) Admissions personnel; and

(ii) Seattle Center Security personnel.

(b) Concessionaire shall pay the actual cost for City-contracted and non-City contracted peer group security. All overnight peer group security positions must be staffed by Seattle Center's current exclusive provider.

(7) Mercer Street Garage Overpass Charges:

If the Mercer Street overpass is available for advertising purposes and the Director Approves Concessionaire's proposed use, then the following will apply:

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Concessionaire shall pay the labor cost incurred by the City in mounting on and removing from the Mercer Street Garage overpass a "Bite of Seattle" banner. Such banner shall be mounted as early as reasonably possible during the two weeks before each Festival and removed and returned to Concessionaire as soon as reasonably possible after the Festival. Said banner may be placed to co-exist with a Seattle Center or Next Fifty banner.

6. TIME AND PLACE OF PAYMENT- DELINQUENCY CHARGE

A. Time and Place of Payments:

(1) The Landscape Maintenance Fee referenced in Subsection 5D, is due and payable on the Monday immediately preceding the Friday opening of each year's Festival, without invoice.

(2) Fees and charges specified in Subsections 5B and 5C are due and payable on the September 15th immediately following each Festival, without invoice.

(3) Fees and charges included in any year's Seattle Center Festival Event Service Order (including but not limited to the charges imposed pursuant to Subsections 5.E and 5.F) and all other fees and charges not otherwise specified herein are due and payable no later than thirty (30) days after the date of the City invoice therefor.

B. Delinquencies:

Payments not received on or by the date due shall be considered delinquent. If there is any delinquency, a service charge of the greater of 18% per annum or such other amount as may be established by City ordinance, shall be added to the outstanding balance from the date when payment was originally due to the date paid. Concessionaire's obligation to pay the fees and charges specified herein shall survive the termination of this Agreement.

C. Disputed Fees:

If Concessionaire disputes any City invoice or other charge imposed pursuant to the Agreement, Concessionaire shall remit the full amount of the invoice or charge on or by the date it is due and payable, and concurrently submit to the Director a notice explaining the basis for Concessionaire's dispute. Upon receipt of any disputed payment and

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Concessionaire's explanation notice, the Director shall schedule a meeting with Concessionaire within the following thirty (30) calendar days to provide an opportunity for the parties to resolve their dispute. If the dispute is not resolved through such meeting, Concessionaire may then commence legal proceedings to resolve the same. Concessionaire's failure to remit the disputed amount(s) as provided herein shall constitute a waiver of Concessionaire's dispute with respect to such invoice or other charge and the amount shall then be considered delinquent, and Concessionaire shall be deemed to be in material breach of this Agreement.

D. Address for Payments to City:

All payments shall be made payable and shall be delivered to The City of Seattle c/o Seattle Center Fiscal Services & Accounting, 305 Harrison Street, Seattle, WA 98109, or to such other address as the Director shall specify.

7. BOOKS AND RECORDS; FINANCIAL REPORTS

A. Books and Records:

Concessionaire shall maintain, and ensure that each of its subconcessionaires maintains, true, separate, complete and auditable records, and an accounting system having controls governing inventories and receipts, and detailed records of all income and expenses of all business conducted in, on or from the Premises, which records and accounting system shall be subject to the City's Approval. Neither Concessionaire nor any of its subconcessionaires shall destroy any dated daily cash register tapes generated as a result of commercial activity undertaken pursuant to this Agreement at any time during the term of this Agreement or during the three years following the expiration or earlier termination of this Agreement, except with the City's Approval.

B. Financial Reports:

On or by the 15th day of September for each Festival year, Concessionaire shall submit to the Seattle Center Fiscal Services & Accounting at the address specified in Section 6 hereof, a detailed report of the Gross Receipts generated during that year's Festival, in a format Approved by the City, together with such other information regarding that year's Festival as the City may request.

C. Survival of Record-keeping & Reporting Obligations:

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Concessionaire's record-keeping and reporting obligations shall survive the termination of this Agreement.

8. AUDIT

A. Audit:

Concessionaire shall keep true, separate, complete and auditable records and maintain an accounting system having controls governing (1) inventories and receipts, and (2) detailed records of all income from all business conducted on or from the Premises.

Concessionaire shall permit the City, from time to time, as the Director or the City Auditor deems necessary, to inspect and audit in King County, Washington, at any and all reasonable times, all of Concessionaire's pertinent books and records pertaining to the activity undertaken on or from the Premises pursuant to this Agreement, and shall supply the City with, or shall permit the City to make, a copy of any such books and records and any portion thereof, upon the Director's or City Auditor's request. The Director shall notify Concessionaire of the amount of any over- or underpayment found. Any overpayment shall be a credit against any fees and charges subsequently due or shall be refunded to Concessionaire; any underpayment shall be immediately due and payable and shall be delinquent if not paid within ten (10) days after the date of such notice. Concessionaire shall ensure that such inspection, audit and copying right of the City is a condition of any subcontract, concession or catering agreement or other arrangement under which any other person or entity is permitted to use or occupy the Premises or engage in catering and concession activity on or from the Premises.

9. LIABILITY

A. Indemnity:
Concessionaire shall indemnify and hold the City harmless from any and all losses, claims, actions, damages, and expenses arising out of or resulting from the acts or omissions of Concessionaire or its sub-concessionaires, agents or employees under this Agreement. If any loss, claim, action, damage, or expense is asserted or brought against the City, Concessionaire, upon notice of the commencement thereof, shall defend the City against the same at its sole cost and expense and if final judgment be adverse to the City, or the City and Concessionaire jointly, Concessionaire shall promptly satisfy the same. The liability described in this subsection shall not be diminished by the fact, if it be a fact, that any such death, injury, damage, loss, cost or expense may have been contributed to, or may be alleged to have been contributed to, in part, by

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the negligence of the City, its officers, employees, or agents; *provided*, that nothing contained in this subsection shall be construed as requiring Concessionaire to indemnify the City against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from sole negligence of the City, its employees, officers, or agents. The indemnification provided for in this subsection shall survive the expiration or termination of this Agreement. Concessionaire further waives with respect to the City and for purposes of this Agreement only, its immunity under RCW Title 51, the Industrial Insurance Act. The parties acknowledge that this waiver was mutually negotiated and agreed upon.

B. Insurance:

Throughout the Term, Concessionaire shall maintain such insurance coverage as is specified in the Insurance Addendum attached hereto as Exhibit A, and shall otherwise comply with the terms and conditions for insurance contained therein.

10. LIENS AND ENCUMBRANCES

Concessionaire shall keep the Premises free and clear of any liens and encumbrances arising out of its use and occupancy thereof. At the Director's request, Concessionaire shall deliver to the Seattle Center Contracts and Concessions Manager written proof of the payment of any item that could be the basis of such a lien, if not paid.

11. COVENANTS REGARDING CONCESSIONAIRE'S OPERATING CONDITIONS

A. Business Hours:

(1) Concessionaire shall not leave the Premises unoccupied or unsecured. It shall open and maintain its operation ready for the transaction of business with the public at the following times: 11:00 a.m. to 9:00 p.m. on Friday and Saturday, and 11:00 a.m. to 8:00 p.m. on Sunday.

(2) Concessionaire shall at all times during the Festival, including Move-in and Move-out days, maintain that level of security agreed to in the approved Security Plan described in Subsection 4.A(4).

B. Maximization of Gross Receipts:

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Concessionaire and its subconcessionaires shall carry on their business with diligence and efficiency and keep in stock lines of merchandise, food products and beverages of such size, quality and character as will maximize the generation of Gross Receipts.

C. Personnel:

Concessionaire and its sub-concessionaires shall employ courteous, competent, and efficient help in such numbers, skills, and experience as is necessary to properly and efficiently conduct their activities on the Premises. At all times the Festival is open for business, Concessionaire shall have on the Premises a qualified representative authorized to represent Concessionaire in dealings with the City, and Concessionaire shall keep the Director informed of the identity of such person and any limits on such person's authority.

Concessionaire, sub-concessionaires and sub-contractors shall ensure that their staffs have and produce upon request, all the required certifications and/or licenses necessary to legally and safely operate equipment, including but not limited to forklifts, on the Premises.

D. Business Name:

Concessionaire shall not change the name by which it carries on its business without the Director's Approval.

E. Electricity:

The City shall not be liable for the interruption of any utility service unless due to the sole negligence of Seattle Center personnel.

F. Seattle Center Equipment:

The City shall provide stage and sound equipment as its Seattle Center Department inventory permits and to the extent specified in Concessionaire's Event Service Order and/or Concessionaire's Approved Site Plan, at no charge. Concessionaire shall obtain any additional necessary sound and stage equipment at its sole expense while adhering to established guidelines in utilization of Seattle Center stage labor for assembly and disassembly of stage equipment.

The City shall also provide at no charge Technical Facilities Management (TFM) equipment as listed and available on the current inventory list. This includes, but is not limited to, food decking including Terraplas™, food sinks, tree boxes as well as tables and chairs.

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G. Grounds Cleaning:

The City shall provide grounds clean-up service in all areas outside of the vendor and service booths at the Festival. Concessionaire shall ensure that all grease, ashes and debris generated as a consequence of activity of Concessionaire or any of its sub-concessionaires are deposited in appropriate disposal locations prior to, during and after each Festival.

H. Reader-boards and Digital Media Signage:

The City shall provide Concessionaire with reader-board and digital media space, as available, for the two (2) weeks prior to and during each Festival, at no charge. The Director, solely, shall determine the number of such reader-boards and their locations. Digital medium content shall be limited to event and title or presenting sponsor information, in accordance with Seattle Center's digital signage policy, which policy is incorporated herein by reference.

I. Grounds and Landscaped Areas:

Using agricultural gypsum line, cording, fencing, or other means, Concessionaire shall delineate at the rear of each booth or tent location designated on any Approved Site Plan, an area no larger than six feet multiplied by "X" (where "X" equals the width of such booth or tent area) to mark the area to which the occupants of such booth or tent are restricted when engaged in food or beverage preparing, cooling, cooking, or selling, supply storing, or any other Festival-related activity (other than the receiving of deliveries). Concessionaire shall ensure that each of its sub-concessionaires and every officer, employee, and agent thereof and volunteer therefore engages in such activity only within such area. Concessionaire shall further ensure that all booths and other sales and demonstration facilities erected or installed on the Premises, and other areas of the Premises being used by Concessionaire or any of its sub-concessionaires for any Festival purpose, include a means of protecting the grass, irrigation lines and other surfaces of the Premises from wear or damage to the extent practicable. Such booths, sponsorship or display vehicles, sales and demonstration facilities, or other sub-concessionaires use areas on lawn or landscaped areas must be constructed as follows:

(1) On Soft Surfaces (Grass, Dirt, and Mulched Areas):

The Concessionaire or any of its sub-concessionaires can continue to use the same flooring it has used since 1986, plywood mounted

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on 2" X 4"s. For vendors building their own flooring or for any new flooring built by the show decorator, the entire area being used must have flooring covered by 5/8" CDX plywood built on 2" x 4"s on their edge. If end pieces are connected to such 2" x 4"s, a 1" diameter hole shall be drilled through the 4" side of such end pieces approximately every 8" to allow air to circulate under the raised flooring.

Should any kind of vehicle, truck, trailer, forklift, or motorized cart need to be driven across or positioned upon a soft surface (grass, dirt, or mulched area), plywood shall be placed underneath the vehicle's tires as it travels and also be positioned under the tires in its final location. Pieces of plywood that remain under the individual tires of such vehicles shall be no larger than 12"x24." Surface protection from oils or other liquids produced by the vehicle shall also be provided. 2' of grounds covering must be provided at all portable toilet locations for which the access points are from a grassy area.

The use of stakes is restricted to a depth of 12 inches in all areas. If stakes are used they must be painted or labeled in a way that clearly indicates the 12-inch maximum depth.

(2) <u>On Hard Surfaces Where Cooking Is Undertaken</u>:

The entire area being used, whether for booth, food preparing and cooking, or other purposes, must be thoroughly protected against food, beverage, ash and grease spills by having flooring in layers as follows:

(a) Lower layer of 4' x 8' CDX 1/2" or thicker plywood installed directly under each cooking unit (barbecues, deep fryers, grills, griddles, spit, woks, etc.) as well as not less than 4' around each cooking unit.

(b) Upper layer of rubber backed carpet or Astroturf securely joined together in a manner that covers the entire booth, *i.e.*, cooking and all other areas.

(3) <u>On Hard Surfaces Where No Cooking Is Undertaken</u>:

Concessionaire shall install rubber-backed carpet or Astroturf, securely joined together in a manner that covers the entire area whenever and wherever food sampling is being done. Seattle Center reserves the right to require the Concessionaire to use

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rubber backed carpet, Astroturf, or other protective coverings in other areas that it deems necessary.

(4) Planted areas behind/near vendor booths:

Concessionaire must provide fencing or some other mutually agreed-upon type of protective barrier behind all vendor booths near planters and/or trees, as deemed necessary by the Director.

J. Parking:

On an annual basis for each year of this Agreement, the City shall provide Concessionaire with three (3) parking permits for the Seattle Center Mercer Street Garage or the Fifth Avenue North Garage, to be used solely for Festival organizers visiting Seattle Center on Festival business.

K. Fixtures, Furnishings, and Trade Equipment:

All fixtures, furnishings, and trade equipment installed on the Premises shall be of high quality, of a modern type, and either new or completely reconditioned. Temporary or portable concession facilities shall be of the same quality as those commonly found in permanently installed concessions.

L. Deliveries:

All deliveries shall be made to a mutually pre-determined delivery location or entrance specified on the Approved Site Plan only during such periods as the Director designates. All deliveries must be completed before 11:00 a.m. on Festival days unless otherwise authorized by the Director.

M. No Nuisances or Objectionable Activity:

Neither Concessionaire nor any of its sub-concessionaires shall permit any excessive or objectionable noise, odor, dust, vibration or similar substance or condition to remain on or be emitted from the Premises; interfere with access from the Seattle Center or any part thereof, including the Premises, or with the traffic thereon; create any nuisance in or adjacent to the Seattle Center; or do anything at the Seattle Center that will create a danger to life or limb. As between the City and Concessionaire, Concessionaire shall be solely responsible for ensuring that all Festival activities comply with applicable safety and health laws and regulations.

N. Food and Beverage Standards:

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All food and beverages offered for sale on or from the Premises shall be of the best quality, wholesome, and pure. All canned edible food products used on the Premises shall be approved by the U.S. Department of Agriculture and of the quality commonly known as "fancy." Baked goods, dairy and other food products shall not be served or used after their pull dates. No meat products containing texturized vegetable protein or other meal, grain or filler products shall be used on the Premises.

O. No Misbranding or Misrepresentation:

Neither Concessionaire nor any of its sub-concessionaires shall offer for sale or rent on or from the Premises any food, beverage or other merchandise or service that is misbranded, or misrepresent the size, quality, capabilities, or other characteristics of any food, beverage, merchandise or service offered for sale or rent.

P. Limitations on Use of Common Areas:

Neither Concessionaire nor any of its sub-concessionaires shall use the Seattle Center common areas to meet governmental requirements peculiar to Concessionaire's operations hereunder, and whenever facilities are required to satisfy such governmental requirements, the facilities shall be located within the Premises at Concessionaire's sole expense unless the Director determines otherwise.

Q. Environmentally Sensitive Food Service Material Required:

Concessionaire shall not use or permit the use of any food or beverage container that, on or after the date this Agreement is executed, is prohibited by the Director for use or service at the Seattle Center.

R. Lost Children on Premises:

Concessionaire shall identify on each proposed site plan the location of a "Lost Child" area for the full three days of the Festival. The "Lost Child" area shall be staffed with competent childcare providers from the opening of each Festival day through one hour after the close of each Festival day. Such childcare providers shall have reasonable access to, and training in, the use of adequate life-safety communications equipment at that specific site.

S. Medic Station on Premises:

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Throughout the Festival, Concessionaire shall install and operate on the Premises a first aid center equipped with sufficient certified medical personnel and adequate supplies for first-aid treatment to Festival patrons, staff, and volunteers. The minimum hours of operation shall be one (1) hour prior to the opening of each Festival Day through one (1) hour after closing. Concessionaire shall pay all costs for such medical personnel and supplies. Concessionaire shall ensure that a written report is prepared immediately after any treatment is provided from such first aid center, identifying the individual treated, by name, and describing the nature of the incident that made such treatment necessary. Concessionaire shall deliver a copy of each such report to the Director at the end of each day of the Festival.

T. Festival Dumpsters, Refuse, Food Waste Recycling, and Garbage Containers:

The Director shall determine the number, size, and location of dumpsters for the Festival after consultation with Concessionaire regarding its needs and considering the City's ability to service said dumpsters.

Concessionaire shall provide refuse and garbage containers in such number and style as may be approved by the Director and shall provide special containers, and/or compactor and disposal system(s) whenever the Director determines such equipment to be necessary.

If dumpsters or containers are ordered to supplement the Seattle Center inventory, that order and any additional tonnage or tipping fees shall be placed and paid for directly by Concessionaire to the service provider.

U. Ash and Grease Barrels:

Concessionaire shall provide in sufficient quantities appropriate ash and grease barrels to all authorized sub-concessionaires engaged in spit-barbecuing, deep-frying and other similar cooking methods requiring such equipment. Concessionaire shall pay all costs to remove and dispose of ash and grease barrels and their contents. Concessionaire shall ensure that no sub-concessionaires disposes of any ash or grease in City-owned dumpster(s) or waste receptacles.

Concessionaire and sub-concessionaires shall use easily recognizable signage to distinguish all ash and grease barrels.

V. Security Services to be Provided by On- and Off-Duty Seattle Police Personnel:

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(1) Concessionaire's Obligations:

Concessionaire shall reimburse the City for the services of such on-duty Seattle Police Department (SPD) personnel as SPD deems necessary to provide security for the Festival.

Concessionaire shall secure and pay for the services of such off-duty SPD personnel as are necessary to implement the Security Plan described in Subsection 4.A(4).

(2) Compensation Payable:

The compensation payable by the Concessionaire for the security services provided by on-duty Seattle Police Department personnel shall be equal to the top single fee established by the Special Events Committee for special events with No Entry Fee and an anticipated attendance of 50,000 or more. For 2012 the fee shall be $34,367. For each subsequent year of this Agreement the on-duty SPD compensation payable shall be adjusted by the percentage increase that occurred during the preceding calendar year in the CPI-U Seattle-Tacoma-Bremerton Metropolitan Area as published by the Bureau of Labor Statistics, United States Department of Labor, or its successor, as is the current method for Special Event Permit fee adjustments. Notwithstanding the foregoing, in no case shall the annual on-duty SPD compensation payable be increased by more than three percent (3%) from the immediately preceding Festival Year, or be less than the fee paid during the immediately preceding Festival Year.

Concessionaire shall remit full payment for services provided by on-duty SPD personnel by check payable to the City of Seattle and delivered to the City, c/o Seattle Center Fiscal Control & Accounting, 305 Harrison Street, Seattle, WA 98109, or to such other address as the Director shall specify.

The compensation payable by Concessionaire for the security services provided by off-duty SPD personnel shall be equal to the actual number of officers, sergeants, administrative sergeants, and lieutenants engaged in such security work at the Festival pursuant to this Agreement multiplied by their respective, then-current, hourly compensation rates, as established by the City, multiplied by the actual (not estimated) number of hours each was engaged in such work. Full payment for the services of all off-duty police personnel is to be made by Concessionaire in the form of a check made payable to the Seattle Police Trust Account, delivered to the

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Commander of the Seattle Police Department's Special Activities Section, no later than 5:00 p.m. on the Wednesday immediately following the close of each year's Festival.

W. Vehicle Access:

Only vehicles authorized by the Concessionaire and displaying an approved Seattle Center parking pass shall access the Seattle Center grounds. All unauthorized vehicles will be cited and may be removed from the site.

X. Post Festival Bus Shuttles

If the Director, along with SPD and the Concessionaire determine that for the increased safety and security of Festival patrons it is desirable to provide free public bus shuttles post- Festival, then the Concessionaire shall be responsible for 50% of the costs of providing METRO buses and staff, up to $2,500.

Y. Seattle Children's Theater Drop-off Area

Beginning with Move-in on Monday the Concessionaire will establish a parent/child pick up and drop off area on Second Avenue south of the SCT loading dock similar in size and location to the area created for the 2011festival.

12. ADVERTISING, PUBLICITY AND ENTERTAINMENT

A. Submission and Approval of Annual Advertising and Promotion Plan:

Ninety (90) days prior to each Festival, Concessionaire shall submit to Seattle Center for Approval an Advertising and Promotion Plan for that Festival Year. Any Festival changes or additions to such plan shall be approved in writing by the Seattle Center Director of Marketing and Business Development prior to implementation.

Concessionaire shall conduct its promotions, marketing, advertising, publicity and public relations regarding the Festival in a manner that both distinguishes the "Bite of Seattle" as a separate and unrelated festival from the annual "Northwest Folklife Festival" and "Bumbershoot Festival," and is consistent with the Seattle Center Vision Statement and Goals; furthermore, Concessionaire and Seattle Center personnel designated by the Director shall cooperatively plan such promotions, marketing, advertising, publicity and public relations.

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B. Prohibited Promotion and Other Material; Removal of Same:

Neither Concessionaire nor any of its sub-concessionaires shall display, post, or distribute any sign, symbol, advertising of any nature, or any printed material on any part of the Seattle Center without prior written permission thereof from the Director, nor shall Concessionaire permit such activity to occur in or on location(s) other than those specifically Approved by the Director. Concessionaire shall remove all such signs, symbols, advertising and printed material from the Seattle Center within forty-eight (48) hours after the conclusion of each Festival, at no cost to the City, and shall correct any unsightly condition and repair any damage or injury to City property caused by such signs, symbols, advertising and printed material, and the removal thereof. The City may remove unauthorized display material from City property at any time.

C. Use of Photos and Similar Material:

Each party hereto may make photographs, videotapes, and motion pictures of the Premises and the activity, people, displays and exhibits thereon except that if Concessionaire intends to use such visual material for commercial advertising, filming, promotion, public relations or other similar purposes, Concessionaire shall obtain the prior written Approval of the Director for such use, which Approval may be conditioned upon, among other things, Concessionaire's payment of additional consideration to the City and the securing of satisfactory releases, permissions and other documents.

D. Cross-Promotional Activities:

Concessionaire shall develop and implement a cross-promotional strategy in cooperation with the Director, whereby Seattle Center may promote itself, events and activities using the Concessionaire's communications and promotional tools. The Concessionaire may promote events and activities by way of the Seattle Center communications systems and use Seattle Center's promotional tools with the Director's permission.

E. Promotional Materials: Incorporation of Seattle Center Logo:

If Approved by the Director, Concessionaire may incorporate the Seattle Center logo on all of its collateral pieces, advertisements, website and all press releases.

F. Linked Websites:

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Concessionaire shall maintain a link between its website and the Seattle Center website.

G. Booths:

Concessionaire shall reserve one (1) booth space for the exclusive use of Seattle Center to promote Seattle Center, its events and/or activities. The Seattle Center booth shall not conflict with event sponsors. Seattle Center shall provide notice annually of its intention to use such booth no later than May 1, at which time Concessionaire may redirect allocated space should the option not be exercised.

H. Exclusive Advertising and Sponsorship:

Seattle Center has an aggressive business strategy to secure corporate sponsors. In some cases, a corporate sponsor may require and/or receive exclusive product sales and marketing opportunities at Seattle Center which may include specific facilities or all of Seattle Center. Currently, exclusive sponsors may occur in the following categories: coffee, financial services, carbonated beverages, water, energy drink, automotive, insurance, and technology. If Concessionaire elects to pursue corporate sponsorship sales efforts for the Festival, any sponsorship or advertising arrangement must comply with the terms of existing Seattle Center sponsorship and advertising agreements.

City and Concessionaire will work collaboratively and cooperatively with each other regarding potential corporate sponsorship agreements that may conflict with either Concessionaire's corporate sponsorship sales efforts for the Festival or the City's corporate sponsorship sales efforts for Seattle Center. Each will notify the other in advance of finalizing any sponsorship agreement that would be in effect during the Festival. Concessionaire may enter into corporate sponsorship agreements for the Festival, but not the Seattle Center. City may enter into corporate sponsorship agreements for the Seattle Center campus, facilities and programs, but not the Festival.

City will not allow temporary signage for City's exclusive corporate sponsorships that directly conflict with Concessionaire's presenting sponsorship at Seattle Center during the dates the Festival is open to the public. Temporary signage includes, but is not limited to signs and banners put into place solely for the Festival and includes moveable event signage such as "Windmasters", temporary sponsor banners, promotional tents, etc. City retains the right to authorize exclusive Seattle Center sponsors to install permanent signage on the campus facilities and grounds or annual signage promoting Seattle Center campus activities

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with the corporate recognition limited to 20% of the sign. Permanent signage includes, but is not limited to, plaques, facility naming rights, and boulevard banners, building wall graphics and large scale banners. If mutually agreed upon by both parties, competing sponsors on large scale banners may be covered for Festival days on a case by case basis.

Concessionaire offers rights for City corporate sponsors to be an official sponsor of the Bite of Seattle Festival if the sponsorship category is available at the time of negotiation. The Parties shall work collaboratively in their efforts to secure such rights to the Festival with the goal of minimizing conflicts and maximizing returns for both parties.

13. MAINTENANCE, CLEANING, AND REPAIR

A. City's Responsibilities:

The City shall maintain, clean, and repair the exterior and structural aspects of the permanent facilities on the Premises and the common areas, and all fixtures and improvements installed by the City therein, and shall clean the general grounds areas of the Seattle Center, all to the ordinary standard of maintenance, cleaning, and repair provided for other major users of the facilities and grounds at Seattle Center, and shall keep the same in good condition, normal wear and tear and damage and destruction by fire and other extraordinary casualty excepted. The City will provide or undertake general gardening and landscaping; sanitary control; removal of snow; removal of garbage and other refuse from the City's designated locations; and repair of water, sanitary sewer, and storm water lines connecting with similar lines on the Premises consistent with such repair, cleaning and maintenance obligation. In undertaking such maintenance, cleaning and repair, the City shall make a good faith effort to not unreasonably interfere with Concessionaire's business on and from the Premises. Concessionaire waives all claims for damages, including for any loss of business, resulting from City maintenance, cleaning and repair.

B. Concessionaire's Responsibilities:

Concessionaire, at its own cost and expense, shall keep the Premises and all improvements, alterations, and additions thereto, and Concessionaire's fixtures, furnishings, and trade equipment at all times in a neat, clean, and sanitary condition, and shall permit no waste, damage, or injury thereto. Concessionaire shall also preserve the Premises and all improvements thereto in good repair, except for the effects of normal wear

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and tear and damage by fire or other unavoidable casualty. In carrying out such responsibilities Concessionaire, among other things, shall:

(1) Pay Seattle Center or Seattle Center's contractor to replace any glass in any window, door, display case or other equipment immediately after it becomes cracked or broken.

(2) Keep all drainage pipes free and open and pay any and all costs associated with the cleaning of storm drains due to improper disposal of grey water or other materials into storm drains on the Premises.

(3) Repair all damage from leaky plumbing or drainage pipes not installed on the Premises by the City or caused by Concessionaire's failure to keep drainage pipes free and open.

(4) Remove, periodically, in a timely and careful manner and to an area designated by the Director, all debris generated by or peculiar to Concessionaire's operations on the Premises, *e.g.* grease and ashes.

(5) Prevent the presence of vermin, insects, and other pests on the Premises.

14. COMPLIANCE WITH LAW

A. General Requirements:

Concessionaire, at its sole cost and expense, shall comply with all applicable laws of the United States and the State of Washington; the Charter and Ordinances of The City of Seattle; and rules, regulations, orders, and directives of their administrative agencies and the officers thereof.

B. Licenses and Similar Authorizations:

Concessionaire, at no expense to the City, shall secure and maintain in full force and effect during the term of this Agreement, all required licenses, permits, and similar legal authorizations, and comply with all requirements thereof.

C. Taxes:

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Concessionaire shall pay, before delinquency, all taxes, levies, and assessments arising from its activities on or occupancy of the Premises, including, but not limited to taxes arising out of the activity or business conducted on the Premises, such as the rental or sale of goods or services; equipment and improvements on the Premises; and taxes on Concessionaire's interest in this Agreement.

D. Nondiscrimination and Affirmative Action:

Concessionaire will comply with all applicable equal employment opportunity and nondiscrimination laws of the United States, the State of Washington, and the City of Seattle, including the Seattle Municipal Code (SMC), notably SMC 20.44, and rules, regulations, orders, and directives of the associated administrative agencies and their officers.

E. Applicable Law:

This Agreement shall be construed under the laws of the State of Washington. Venue for any action hereunder shall be in the King County Superior Court.

15. CITY'S POWER TO CONTROL BUILDINGS AND GROUNDS AND ACTIVITIES

A. City's Powers of Control:

Notwithstanding any other provision of this Agreement, the City, without liability of any kind, may:

(1) Increase, reduce, and change in any manner whatsoever the number, appearance, dimensions, and locations of the Seattle Center walks, buildings, landscaping, parking, and service areas, and may also make improvements, alterations, and additions to the common areas;

(2) Regulate all traffic within and adjacent to the Seattle Center;

(3) Impose a reasonable charge for admission to the Seattle Center and facilities therein, including parking facilities; *provided*, that no City fee or charge shall be imposed for such admission

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during a Festival (other than for parking or admission to a facility not used for Festival purposes) unless such fee or charge is effective during the thirty (30) days prior to and after such Festival;

(4) Erect, display and remove promotional exhibits and materials and permit special events on the Seattle Center grounds, buildings, and facilities including the common areas;

(5) Promulgate, from time to time, reasonable rules and regulations regarding the use and occupancy of any area of Seattle Center;

(6) Restrict or prohibit the parking on City-owned or leased property of motor vehicles owned or operated by Concessionaire and any of its officers, employees, agents, suppliers, and invitees;

(7) Determine the days and hours the Seattle Center and various business operations will be open to the public; provided, that the operating hours of the Festival shall not be changed without the prior consent of Concessionaire; and

(8) Change the size, number, and type and identity of other concessions, stores, businesses, and operations being conducted or undertaken at Seattle Center.

(9) Close or end the Festival early in the event of a public safety issue or concern.

B. <u>Concessionaire's Option to Terminate or Reservation of the Right to Terminate should the City Exercise its Options under Subsection 15.A or Section 27</u>:

The Director shall promptly inform Concessionaire if the City intends exercising any power under Subsection 15.A or Section 27 hereof. If Concessionaire reasonably determines that the exercise of such City power will negatively impact Concessionaire or its subconcessionaires, whether financially or as to the quality of the Festival, Concessionaire shall have the option to either terminate this Agreement immediately, or to reserve such right and await the conclusion of the next scheduled Festival in order to determine the impact of the exercise of any such City power. In order to exercise either option, Concessionaire must give notice thereof to the Director within thirty (30) days after Concessionaire's receipt of the Director's notice of exercise specified above. If Concessionaire exercises its option to terminate this Agreement, such termination shall be effective upon the Director's receipt of Concessionaire's notice. If, however,

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Concessionaire reserves its right to terminate this Agreement and elects to await the conclusion of the next scheduled Festival to determine the impact of the City's exercise of power, Concessionaire may terminate this Agreement only by providing a written notice of termination to the Director by November 1st of that Festival Year, which termination shall be effective immediately. In all cases where Concessionaire elects to exercise its option to terminate this agreement as provided herein, Concessionaire shall pay all applicable fees and charges due from Concessionaire's operations and use of the Premises through the effective date of termination.

16. CITY'S RIGHT TO DISAPPROVE MERCHANDISE AND PRICES

In order to protect the public visiting Seattle Center from price gouging, and to ensure that a variety and diversity of food, beverages, merchandise, services and entertainment are offered to the same, and to protect the public image of the City, the City reserves the right to:

A. Prohibit Price Gouging:

Disapprove the price of any food, beverage, item of merchandise, or service that is substantially higher than the price charged by a substantially similar business in the region, and prohibit the charging of such substantially higher price.

B. Prohibit the Sale of Objectionable Materials:

Prohibit the sale of any food, beverage, items of merchandise, or service that the Director determines is unsafe; portrays the City or Seattle Center or any aspect thereof in any incorrect, misleading, or unfavorable manner; depicts or suggests in words, symbols, illustrations, or other forms, any act of violence, or any lewd, immoral, or obscene activity; is inappropriate for a family-oriented recreation and entertainment facility such as Seattle Center; or that may create a substantial litter or other maintenance problem at Seattle Center.

17. CITY'S RIGHT TO PREMISES: INSPECTION, REPAIR, AND IMPROVEMENT OF PREMISES AND OTHER PROPERTY

A. Access to Premises:

Concessionaire shall provide the City with access to the Premises at all reasonable times to inspect the same and to make any repair, improvement, alteration or addition thereto or any property owned by or under control of the City, deemed necessary by the Director, but this right

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of access shall not impose on the City any obligation to make any repair, alteration, addition, or improvement except as specifically provided herein.

B. Permitted Interference with Concessionaire's Operations:

In inspecting, and in making repairs, alterations, additions, and improvements, the City may erect barricades and scaffolding in and outside of the Premises, and may otherwise interfere with the conduct of the business and operations of Concessionaire and any of its subconcessionaires where such action is reasonably required by the nature of the City's work; and such interference shall not be deemed to be a breach or default under this Agreement. The City shall use its best efforts to minimize interference with access to and from the Premises and with business and operations in, on or from the Premises.

C. Suspension of Concessionaire's Operations:

If any such inspection, repair, alteration, addition, or improvement work necessitates the temporary suspension of the business or operations of Concessionaire or any of its subconcessionaires in, on, or from the Premises for a period of two (2) hours or less, the Director shall give Concessionaire notice of such necessity and the anticipated beginning and ending dates of such suspension. Concessionaire waives on behalf of itself and shall obtain from each of its subconcessionaires a waiver of all claims for damages and for any injury to or interference with business operations and losses occasioned by any such suspension.

D. City's Retention and Use of Key to Premises:

For each of the aforesaid purposes, the City shall at all times have and retain a key with which to unlock all of the doors in, upon, and about the Premises, excluding the vaults, safes, and files of Concessionaire and any of its subconcessionaires. The City shall have the right to use any and all means which the Director deems proper to open said doors in an emergency, in order to obtain entry, without liability to Concessionaire or any of its subconcessionaires except for any failure to exercise due care for Concessionaire's or subconcessionaires' property. Any entry to the Premises obtained by the City by any of said means, or otherwise, shall not under any circumstances be construed or deemed to be a forcible or unlawful entry into, or a detainer of, the Premises or a termination of this license to use and occupy the Premises or any portion thereof.

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18. ASSIGNMENT OR TRANSFER

Concessionaire shall not assign or transfer this Agreement or any rights hereunder without the Approval of the Director. Neither this Agreement, nor any right, privilege, or interest conferred, shall pass to any trustee or receiver in bankruptcy or to any receiver or assignee for the benefit of creditors; nor shall this Agreement or any rights, privilege, or interest be transferable by operation of law or proceeding of any court. Any attempted assignment in violation of this provision shall immediately terminate this Agreement. If Concessionaire is a partnership, limited or general, a withdrawal of a general partner, or change, voluntary or involuntary, by operation of law or otherwise, or a general partner thereof, shall be deemed an assignment. If Concessionaire is a corporation, the merger, consolidation, or liquidation of Concessionaire or any change in the ownership of or power to vote thirty-three and one-third percent (33 1/3%) or more of its capital stock, as held as of the date of execution of this Agreement, shall be deemed an assignment except for transfers of stock to Jody May, an individual, or to a trust for her benefit, which transfers are hereby approved. If Concessionaire in any manner permits anyone to occupy all or any portion of the Premises for any purpose including conducting business or other activities, whether or not business related, not within the intent of this Agreement, such permission shall be deemed an assignment. No assignment of this Agreement, with or without the Director's consent, shall release or relieve Concessionaire of or from any of the obligations on Concessionaire's part to be kept and performed under this Agreement. Any such assignment shall be subject to all the terms and provisions of this Agreement. If this Agreement is assigned, Concessionaire shall cause to be delivered to the Director, at the address listed in Section 23, simultaneously with such assignment, an instrument, in writing, executed by the assignee, in which the assignee shall assume and agree to perform all of the terms and provisions of this Agreement on Concessionaire's part to be kept and performed that theretofore have not been fully performed.

19. SUBCONCESSIONAIRE AGREEMENTS AUTHORIZED

Concessionaire is hereby authorized to grant subordinate rights hereunder, including the right to use and occupy the Premises or such portions thereof as may be specified by Concessionaire but only for the purpose of engaging in food, beverage, food- or beverage-related merchandise sales or demonstrations, and novelty sales, all during a Festival, and only to:

- Food and/or beverage service providers (food service establishments);
- Food or beverage service-related merchandise retailers;
- Food or beverage service-related merchandise demonstrators;

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- Retailers of sunglasses, novelties imprinted with the words "Bite of Seattle", and other novelties that have been approved for sale on the Premises by the Director.

20. DAMAGE AND DESTRUCTION

A. Concessionaire's Report of Damage:

Concessionaire shall submit a written report to the Director, at the address listed in Section 23, regarding the circumstances of any damage to the Premises within twenty-four (24) hours after such damage occurs.

B. Obligation to Pay Fees and Charges in the Event of Damage or Destruction:

If the Premises are destroyed by fire or other casualty not occasioned by an act or omission of Concessionaire, or are damaged so extensively as to render the Premises unusable, Concessionaire's obligation to pay fees and charges therefor shall be suspended until the Premises are made usable. If only a portion of the Premises are damaged or destroyed by fire or other casualty not occasioned by an act or omission of Concessionaire and the Premises remain usable, the fees and charges hereunder shall be prorated and Concessionaire shall pay only fees and charges in an amount proportionate to the extent of the Premises that remain usable for the purposes identified in Section 2, hereof.

C. Concessionaire's Right to Terminate:

Notwithstanding any other provision in this Agreement to the contrary, if fifty percent (50%) or more of the Premises is damaged or destroyed by fire or other casualty not occasioned by an act or omission of Concessionaire, Concessionaire may terminate this Agreement by providing notice thereof to the City within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

D. City's Right to Terminate:

Notwithstanding any other provision of this Agreement to the contrary, if fifty percent (50%) of the Premises is destroyed or is so damaged by fire or other casualty as to be untenantable or unusable, or if the City desires to discontinue Concessionaire's operations because of substantial destruction of the Premises or other part of Seattle Center, regardless of whether the Premises are destroyed, damaged, or otherwise, the City may terminate this Agreement by providing prior notice thereof to

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Concessionaire within sixty (60) days after the occurrence of the damage or destruction and shall specify the effective date of such termination.

21. DEFAULT AND BREACH; TERMINATION THEREFOR

A. Act of Default and Breach of Concessionaire:

The following acts and omissions shall constitute a default and material breach of this Agreement by Concessionaire:

(1) The failure to comply with all of the requirements of Section 9 and Exhibit A hereof regarding insurance; or

(2) The violation of any law, Charter provision, ordinance, rule, regulation, order, or directive; or

(3) The failure of Concessionaire to provide, in a timely manner all fees and charges due and owing, and all written reports due to the City; or

(4) The assignment of Concessionaire's interest in this Agreement without the prior written consent of the Director; or the filing of a voluntary or involuntary petition in bankruptcy, or for reorganization or an arrangement; or the adjudication of Concessionaire as being bankrupt or insolvent; or the appointment of a receiver of or for Concessionaire if such appointment, adjudication or similar order or ruling remains in force or unstayed for a period of thirty (30) days; or

(5) The failure to perform or the violation of any other condition or covenant of this Agreement where such default or deficiency in performance was not remedied within a reasonable time determined by the Director.

B. City's Notice of Default and Breach:

The Director shall provide notice to Concessionaire of any event of default, specifying the nature of the act or omission, the reasonable number of hours or days (not to exceed sixty [60] days after the date of the notice) within which such failure must be corrected or the violation must be ceased or remedied to avoid termination, and the City's intention to terminate this Agreement if such act or omission has not been corrected within such stated period.

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C. Remedies Upon Termination:

If Concessionaire fails to correct, remedy, or cease such failure or violation within the time specified in the City's notice, the City may terminate this Agreement without any further proceedings, re-enter the Premises, lease and license others to use said Premises during any portion of the period of use remaining under this Agreement had it not been terminated, and receive rent and license fees therefor. Notwithstanding any such termination and re-entry, Concessionaire's liability for the minimum fees and charges to be paid to the City hereunder shall not be extinguished, and Concessionaire shall pay to the City the difference between said fees and charges and the sum the City receives for the use of the Premises from any other users beginning on the date Concessionaire's rights under this Agreement are terminated and ending one year beyond the current Festival Year, or the expiration of this Agreement, whichever is sooner. The extent of Concessionaire's responsibility for fees and charges for the year beyond the current Festival Year shall be limited to the prior years' Landscape Maintenance Fee, but in no event less than $38, 000. Such payment shall be made within fifteen (15) days after the date of the City's invoice therefor. Such termination and payments shall not relieve Concessionaire from liability to the City for any damages caused by Concessionaire's default and breach and expenses incurred in the leasing or licensing of the Premises.

D. Default By The City:

The City shall not be in default of any obligation to perform under this Agreement unless the City fails to perform such obligation within a reasonable time, which time shall not extend more than thirty (30) days after notice by Concessionaire to the City specifying the particular obligation that the City has failed to perform; provided, however, that if the nature of the City's obligation is such that more than thirty (30) days are required for performance, then the City shall not be in default if the City commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

22. SURRENDER OF PREMISES, HOLDING OVER

A. Surrender and Delivery:

Upon the expiration or earlier termination of this Agreement, and in no event later than 7:00 p.m. on the first Tuesday following each Festival, Concessionaire shall surrender the Premises and promptly deliver to the Director all keys Concessionaire, its subconcessionaires and any of their

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officers, agents, and employees may have to any portion of the Seattle Center and the Premises.

B. Removal of Concessionaire's and Subconcessionaires' Property:

Prior to the conclusion of each Festival, or within five (5) days after the termination of this Agreement, Concessionaire shall remove all fixtures, furnishings, trade equipment, and personal property owned or installed by Concessionaire or any of its subconcessionaires in, on, or from the Premises, taking due care to not unreasonably injure or damage the Premises, and shall ensure that such repairs to the Premises as shall be necessary are made, at no cost to the City, to restore the Premises to their condition as of the commencement date of this Agreement, ordinary wear and tear and improvements, additions, and alterations Approved by the City excepted. Except as may be required by the Director, improvements, additions, and alterations installed on the Premises by the City shall not be removed.

C. Storage of Concessionaire's and Subconcessionaires' Property:

If Concessionaire fails to remove all fixtures, furnishings, trade equipment, and other personal property owned or installed by or for Concessionaire or any of its subconcessionaires on or by the time specified in Subsection 22.B hereof, the City may, but shall not be required to, remove such material from the Premises and store the same, all at Concessionaire's expense; and if the City removes or arranges for the storage of such material, the City shall be reimbursed its costs therefor, including any administrative costs, which reimbursement shall constitute a claim upon Concessionaire.

D. Hold-over Use and Occupancy of Premises:

If Concessionaire, with or without consent, holds over after the expiration or termination of this Agreement or the deadline for Surrender and Delivery specified in Subsection 22.A, Concessionaire shall pay to the City an additional holdover fee in the amount of $5,000 within twenty (20) days after the date of a City invoice therefor, and shall continue to be bound by all the provisions of this Agreement.

E. No Claims For Removal:

In no event shall Concessionaire or any of its subconcessionaires make any claim or demand upon the City nor shall the City be liable for any inconvenience, annoyance, disturbance, or loss of business or any other damage suffered by Concessionaire or any of its subconcessionaires

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arising out of such removal operations under Subsection 22.B or 22.C, hereof.

23. NOTICES AND OTHER DELIVERABLE MATERIALS

All notices required by this Agreement shall be in writing. Unless otherwise specifically provided herein, all notices and other material to be delivered hereunder shall be delivered or mailed to the following:

To City:	Event Service Representative, Bite of Seattle Seattle Center 305 Harrison Street Seattle, Washington 98109
To Concessionaire:	Festivals, Inc. d/b/a Bite of Seattle Suite 100 320 East Sunset Way Issaquah, WA 98027

or such other respective addresses as either party may from time to time designate in writing.

24. NO RELATIONSHIP ESTABLISHED

The City shall in no event be construed to be a partner, associate, or joint venturer of Concessionaire, or any party associated with Concessionaire. Concessionaire is not an agent of the City for any purpose whatsoever. Concessionaire shall not create any obligation or responsibility on behalf of the City or bind the City in any manner.

25. SEATTLE CENTER DIRECTOR'S AUTHORITY

The term "Seattle Center Director" or "Director," as used throughout this Agreement in regard to permission, warrant, consent, approval, rights, interpretation, and discretionary matters, shall mean the Seattle Center Director or his/her designee. The action of the Seattle Center Director or his/her designee pursuant to or in implementation of this Agreement does not constitute any official action by any other City Department or official that may be required by law, ordinance, rule or regulation before Concessionaire may rightfully commence, suspend, enlarge or terminate any particular undertaking or may obtain or exercise any particular right or privilege under this Agreement. Decisions to be made by the Seattle Center Director shall be left to his/her reasonable discretion.

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26. AMENDMENTS

No modifications or amendment of the terms hereof shall be effective unless in writing and signed by authorized representatives of the parties hereto. The parties hereto expressly reserve the right to modify this Agreement from time to time, by mutual written agreement.

27. REDEVELOPMENT MODIFICATIONS

The Director and Concessionaire, or their designees, shall meet on or before the end of February of each year during the term of this Agreement to discuss the impacts, if any, of on-going and any planned Seattle Center redevelopment activity that might affect the next succeeding Festival. Notwithstanding any other provision of this Agreement, if the Director determines, in the exercise of his/her discretion, that in order to facilitate the redevelopment of the Seattle Center, any portion of the Premises is required for some use or purpose other than that contemplated by the parties under this Agreement, the Director shall have the power to materially change the Premises without recourse by Concessionaire. The Director shall notify Concessionaire of any such material change and the effective date thereof, not less than one hundred twenty (120) days prior to the Festival that would be affected by such change.

28. NO WAIVER

No waiver of full performance by either party shall be construed, or operate, as a waiver of any subsequent default of any of the terms, covenants and conditions of this Agreement. The payment or acceptance of any compensation or fee for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

29. REMEDIES CUMULATIVE

Rights under this Agreement are cumulative; failure to exercise on any occasion any right shall not operate to forfeit such right on another occasion. Each party shall also have any other remedy given by the law. The use of one remedy shall not be taken to exclude or waive the right to use another.

30. USE OF LANGUAGE

Terms used in the neuter gender include the masculine and feminine; and terms used in the singular or plural include the other, as the context may require.

31. CAPTIONS

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The titles of sections are for convenience only and do not define or limit the contents.

32. INVALIDITY OF PARTICULAR PROVISIONS

Should any term, provision, condition, or other portion of this Agreement or the application thereof be held to be inoperative, invalid, or unenforceable, the remainder of this Agreement or the application of such term or provision to person or circumstances other than those to which it is held invalid or unenforceable shall not be affected hereby and shall continue in full force and effect.

33. BINDING EFFECT

The provisions, covenants, and conditions contained in this Agreement apply to bind the parties, their legal heirs, representatives, successors, and assigns.

34. PREVIOUS AGREEMENTS SUPERSEDED

The terms and conditions of this Agreement supersede the terms, obligations and conditions of any existing or prior agreement between the parties regarding the subject matter hereof.

35. ACKNOWLEDGMENT OF NEGOTIATED AGREEMENT

The parties to this Agreement acknowledge that it is a negotiated agreement, that they have had the opportunity to have this Agreement reviewed by their respective legal counsel, and that the terms and conditions of this Agreement are not to be construed against any party on the basis of such party's draftsmanship thereof.

36. ENTIRE AGREEMENT

This Agreement, including Exhibit A attached hereto and forming a part hereof, are all of the covenants, promises, agreements, and conditions, either oral or written, between the parties.

37. DEFINITIONS

"Approval," "Approve," "Approved" means the prior written approval of the Director or the Director's designee.

"Common Areas" means and includes any Seattle Center area designated by the City as being for the general use of tenants, licensees, concessionaires, patrons,

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employees, and invitees of the Seattle Center and not within the exclusive control of any tenant, licensee, or concessionaire. Such areas shall include but not be limited to parking areas, landscaped areas, areaways, roads, walks, corridors, malls, public toilets, public stairs, ramps, elevators, escalators, and shelters.

"Gross Receipts" means and includes the total income of Concessionaire and every other person or entity conducting business in, on or from the Premises pursuant to this Agreement ("subconcessionaires") including but not limited to the proceeds from all retail and wholesale sales of food, beverages, and services; the sale and rental of all merchandise, of any kind whatsoever, for cash, barter, exchange or credit, regardless of collections; sales from vending devices; mail or telephone orders received or filled on or from the Premises; all deposits not refunded to purchasers; orders taken although filled elsewhere; fees; commissions; catalog sales; and rental receipts. All installment or credit sales shall be deemed to have been made for the full price on the date of sale regardless of when payment is received.

The term "Gross Receipts" does not mean or include the amount of money refunded to, and not merely credited to, the account of customers who return or do not accept merchandise or services sold by Concessionaire or any subconcessionaires; any exchange of merchandise between stores or the central warehouses of Concessionaire or any subconcessionaires where such exchange is made solely for the convenient operation of Concessionaire's or any subconcessionaires's business and not for the purpose of consummating a sale made in, on or from the Premises; returns to shippers or manufacturers; any discount allowed by Concessionaire or any subconcessionaires to customers; the Washington State Sales Tax and any other tax imposed by any government agency directly on sales.

IN WITNESS WHEREOF, each of the parties hereto has caused this AGREEMENT to be executed by having its authorized representative affix his/her signature below:

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CONCESSIONAIRE:

Festivals, Inc.
d/b/a Bite of Seattle

By:_____
Jody May, President

By:_____
Brett Gorrell, Vice President

THE CITY OF SEATTLE:

By:_____
Robert Nellams
Seattle Center Director

STATE OF WASHINGTON)

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) ss. (Festivals, Inc. Acknowledgement)
COUNTY OF KING)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Jody May, to me known to be the President of Festivals, Inc., who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument for and on behalf of Festivals, Inc.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Signature) (Printed or typed name)

Notary Public in and for the State of Washington, residing at
My appointment expires

STATE OF WASHINGTON)
)ss. (City Acknowledgment)
THE COUNTY OF KING)

On this _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Robert Nellams, to me known to be the Director of the Seattle Center Department of The City of Seattle, who executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of The City of Seattle for the uses and purposes therein mentioned, and on oath stated that she was authorized to execute said instrument for and on behalf of The City of Seattle.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

(Signature) (Printed or typed name)

Notary Public in and for the State of Washington, residing at
My appointment expires

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Exhibit A

INSURANCE ADDENDUM
To Concession Agreement

CONCESSIONAIRE: SEND THIS FORM TO YOUR INSURANCE BROKER

INSURANCE COVERAGES AND LIMITS

Concessionaire shall cause to be maintained continuously throughout the term of this Agreement, at no expense to the City, minimum coverages and limits of insurance as described below and to submit satisfactory evidence of such insurance not less than ten (10) days prior to the event:

1. COMMERCIAL GENERAL LIABILITY (CGL) insurance including:
   Premises/Operations
   Contractual
   Host Liquor (if alcoholic beverages are served)
   Personal/Advertising Injury
   Stop Gap/Employers Liability (if applicable)

   Such insurance must provide a minimum limit of liability of $1,000,000 each Occurrence Combined Single Limit Bodily Injury and Property Damage (CSL) except:
   $1,000,000 each Offense Personal and Advertising Injury
   $1,000,000 each Accident/Disease Stop Gap/Employers Liability (if applicable)

2. AUTOMOBILE LIABILITY insurance for owned, non-owned, leased or hired vehicles (as applicable) with a minimum limit of liability of $1,000,000 CSL.

2. EXCESS or UMBRELLA LIABILITY INSURANCE in excess of the CGL and Automobile Liability insurance policies if necessary to provide a total minimum limit of liability of $2,000,000 each Occurrence CSL Bodily Injury and Property Damage.

3. WORKER'S COMPENSATION insurance as respects the state of Washington securing liability for industrial injury to employees if required by Title 51 of the Revised Code of Washington (RCW).

4. PYROTECHNIC LIABILITY insurance with a minimum limit of liability of $2,000,000 each Occurrence if pyrotechnics are used for an Event as required by the permit required from the Seattle Fire Marshall.

TERMS AND CONDITIONS

1. The insurance policy or policies, endorsements thereto, and subsequent renewals be subject to approval by the City as to company, form and coverage. The insurer shall be:
   a. Licensed to do business in the State of Washington and Rated A- VII or higher in the A.M. Best's Key Rating Guide, or
   b. Procured under chapter 48.15 RCW by a Washington State licensed surplus line broker.

2. Such insurance as is provided under items 1, 2, 4 and 5 above shall include "The City of Seattle" as an additional insured for primary and noncontributory limits of liability subject to a separation of insureds clause. The limits of liability are minimum limits of liability only and shall not limit the liability of Concessionaire or any of its insurers; the City shall be an additional insured for all available limits of liability available to Concessionaire, whether primary, excess, contingent or otherwise.

3. Coverage shall not be cancelled without at least thirty (30) days prior written notice to the City, except ten (10) days notice with respect to cancellation for nonpayment of premium.

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4. Self-insured Workers Compensation or self-insured retentions in excess of $25,000 shall be disclosed in writing and are subject to the approval of the City's Risk Management Division. Approved self-insurance may be partially or wholly substituted for required commercial liability insurance coverages.

5. Failure of Concessionaire to fully comply with these insurance requirements shall constitute a material breach of this Agreement.

EVIDENCE OF INSURANCE

1. Concessionaire's insurance broker shall issue a certificate of insurance that meets the minimum coverages and limits requirements herein and Concessionaire or its authorized representative shall issue self-insurance certification.

2. CERTIFICATION SHALL HAVE ATTACHED A COPY OF AN ADDITIONAL INSURED ENDORSEMENT OR BLANKET ADDITIONAL INSURED POLICY PROVISION THAT DOCUMENTS THAT "THE CITY OF SEATTLE" IS AN ADDITIONAL INSURED FOR PRIMARY AND NON-CONTRIBUTORY LIMITS OF LIABILITY UNDER CGL INSURANCE.

3. If the CGL insurance is partly or wholly self-insured, Concessionaire shall state in writing that it will protect the City as an additional insured under the self-insured retention as if a commercial CGL insurance policy were in force.

4. Insurance and/or self-insurance certification (including copies of additional insured policy provision) shall be delivered to:

   Seattle Center Event Sales
   305 Harrison Street
   Seattle, WA 98109
   Fax: (206) 684-7366
   Email: SCBooking@seattle.gov.

A copy shall be emailed in PDF format to riskmanagement@seattle.gov.

NOTE TO INSURANCE BROKER:

1. **ATTACH THIS INSURANCE ADDENDUM TO THE EVIDENCE OF INSURANCE.**

2. **IF ANY QUESTIONS OR ISSUES, CONTACT CITY RISK MANAGEMENT AT (206) 386-0071**

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Form revised: December 6, 2011

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	CBO Analyst/Phone:
Seattle Center	Alex Bennett 615-1827 Ned Dunn, 684-7212 Suzanne Smith, Law, 684-5472	Greg Shiring, 386-4085

Legislation Title:
AN ORDINANCE relating to the Seattle Center Department; authorizing execution of an agreement with Festivals, Inc. for the presentation of annual Bite of Seattle festivals at Seattle Center.

Summary of the Legislation:
This legislation authorizes a three-year agreement between the City of Seattle and Festivals, Inc. for the presentation of the 2012, 2013, and 2014 Bite of Seattle Festivals at Seattle Center.

Background:
The Bite of Seattle is one of three major festivals held annually on the Seattle Center campus. The other two major festivals are Northwest Folklife Festival and Bumbershoot. Each major festival has its own unique relationship with the City. Bumbershoot, produced by One Reel, is structured to cover Seattle Center's marginal costs. Folklife receives direct City support. The Bite of Seattle is the only purely commercial event of the three major festivals.

The 2012 Bite of Seattle, scheduled for July 20-22, will be the 31st annual Bite of Seattle, and the 27th held at Seattle Center. Each year the Bite of Seattle attracts one of the largest and most diverse audiences to Seattle Center to enjoy food from around the world. In 2013, the Bite is scheduled for July 19-21, and in 2014 for July 18-20.

In 2011, Seattle Center earned net income of $39,000 from the Bite, excluding parking revenue. The average net income from this event was $72,000 for the period 2008-2010. In 2011 the net income fell significantly due to low attendance from unusually inclement weather. Seattle Center projects that net revenue from the Bite of Seattle in 2012-2014 will average approximately $80,000, assuming a normal range of July weather. Consistent with earlier agreement, the City receives a percentage of all food, beverage and merchandise sales. Festivals, Inc. pays a landscape fee and reimburses the City for all applicable costs, including labor, utilities and fees. The Bite also pays the City a fee for the use of on-duty police officers at the event. This fee is tied to the Special Events rate schedule. The 2012 rate is $34,367. In addition, the Bite hires off-duty police to carry out its approved security plan.

The new agreement includes few substantive changes from the previous agreement. The agreement is re-organized for easier use by both parties. There are minor changes in financial terms regarding the percentage of Food and Beverages Sales and Vendor Booth Fees (see below). In addition, in the new agreement Seattle Center has negotiated broader rights to enter

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into campuswide exclusive sponsorship agreements, as part of the Center's overall strategy to increase sponsorship revenue.

There are three primary revenue sources from the Bite of Seattle:

(1) Percentage of Food, Wine and Merchandise Sales
The City will receive 10% of all food and wine sold in designated areas, and 10% on merchandise sales other than from craft and commercial vendors. For craft vendors and commercial vendors, the City will receive 10% of the fee paid by vendors to Festivals, Inc. Under the previous agreement, the City received a flat $90 fee per vendor. For sales of beer or spirits in designated beer gardens and comedy or dance halls approved in the agreement, the City will receive 20% for the first $50,000 of gross receipts and 15% of gross receipts above $50,000. This is a change from the previous agreement, under which Seattle Center received 20% of gross receipts. Seattle Center estimates the net revenue impact of these two contract changes will be a wash to start, with an opportunity for an increase in net Seattle Center revenue of $2,000 by year three.

(2) Landscape (Grounds Restoration) Fee
The landscape fee paid by the Festivals, Inc. has an annual adjustment subject to a 3% cap and the stipulation that the fee will never be less than the preceding year. For 2012, the landscape fee is $39,563.

(3) Reimbursement for Event-Related Labor and Nonlabor Costs
Seattle Center charges an hourly rate to the festival for the cost of departmental staff involved in event set-up, event support, and event clean-up. Services, materials, or supplies required for the festival, including utilities and fees, are also charged back to the Bite.

The agreement also encourages cross-promotional opportunities, such as linked websites, and provides one booth for the exclusive use of Seattle Center in which to promote Seattle Center activities and events.

Please check one of the following:

____ **This legislation does not have any financial implications.**

__X__ **This legislation has financial implications.**

Appropriations:

Fund Name and Number	Department	Budget Control Level*	2012 Appropriation	2013 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Appropriations Notes:
This legislation does not authorize appropriations.

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Anticipated Revenue/Reimbursement Resulting from this Legislation:

Fund Name and Number	Department	Revenue Source	2012 Revenue	2013 Revenue
11410	Seattle Center	% of Food and Beverage Sales	$121,621	**$124,050**
		Grounds Restoration Fee	$39,563	**$40,350**
		Reimbursement for event labor and non-labor expenses	$59,903	**$61,700**
TOTAL			**$221,079**	**226,100**

Revenue/Reimbursement Notes:
Seattle Center's 2012 Adopted Budget includes the 2012 revenues. A cost of living factor is applied to derive the 2013 number.

Total Regular Positions Created, Modified, or Abrogated through this Legislation, Including FTE Impact:

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2012 Positions	2012 FTE	2013 Positions*	2013 FTE*
TOTAL							

** 2013 positions and FTE are total 2013 position changes resulting from this legislation, not incremental changes. Therefore, under 2013, please be sure to include any continuing positions from 2012.*

Position Notes:
This legislation does not create or abrogate positions.

Do positions sunset in the future?

Spending/Cash Flow:
(This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.)

Fund Name & #	Department	Budget Control	2012	2013 Anticipated

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		Level*	Expenditures	Expenditures
11410	Seattle Center	Festivals	$139,000	$144,000
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Spending/Cash Flow Notes:
Anticipated operating costs for hosting the Bite of Seattle are included and appropriated in Seattle Center's annual operating budget and include:

	2012	2013
Event Support (Sound, Stage, Admissions)	$43,000	44,000
Grounds and Facilities Support	$96,000	$99,000
TOTAL	**$139,000**	**$144,000**

Net Bite of Seattle Revenue

	2012	2013
Total Revenue	$221,079	$226,500
Total Expense	$139,000	$144,000
NET	**$82,079**	**$82,500**

The net numbers above ($82,079 in 2012 and $82,500 in 2013, do not include Seattle Center parking revenue, which is not directly attributable to specific events. However, we do know that the Bite of Seattle produces on average between $50,000 and $75,000 in additional parking revenue as compared to a regular summer weekend.

Other Implications:

a) **Does the legislation have indirect financial implications, or long-term implications?**
No.

b) **What is the financial cost of not implementing the legislation?**
Without legislation authorizing the agreement to produce the event, Seattle Center net operating revenues would decline, unless the Bite of Seattle were replaced by another event or events that produced a similar level of net revenue.

c) **Does this legislation affect any departments besides the originating department?**
Yes. The Seattle Police Department (SPD) provides on-duty police for the Bite of Seattle, for which the Bite pays a fee of $34,367 to SPD. In addition, the Bite hires off-duty Seattle Police to carry out its approved security plan.

d) **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**
As one of three major festivals held annually at Seattle Center, the Bite of Seattle is recognized as a signature Seattle Center event. If this legislation is not approved, Festivals, Inc will have to find an alternate location for the Bite of Seattle or cease operation of the festival. It would be difficult for Seattle Center to find an alternative event which provides net income and utilizes the full capacity of the campus.

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e) Is a public hearing required for this legislation?

No.

f) Is publication of notice with *The Daily Journal of Commerce* and/or *The Seattle Times* required for this legislation?

No.

g) Does this legislation affect a piece of property?

No.

h) Other Issues:

List attachments to the fiscal note below:

There are no attachments to this fiscal note.

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City of Seattle
Office of the Mayor

May 22, 2012

Honorable Sally J. Clark
President
Seattle City Council
City Hall, 2nd Floor

Dear Council President Clark:

I am pleased to transmit the attached proposed Council Bill that authorizes a three-year agreement with Festivals, Inc. for the presentation of the 2012, 2013, and 2014 Bite of Seattle festivals at Seattle Center. The 2012 Bite of Seattle will take place from July 20 to 22 and will be the 31st annual Bite of Seattle, the last 27 of which have been held at Seattle Center. Each year, the Bite of Seattle attracts a large and diverse audience to the Center to enjoy food from around the world. In addition, during the 2012 festival the Bite of Seattle will help to honor the 50th Anniversary of the 1962 World's Fair with added special programming.

The Bite of Seattle is a commercial event which is expected to provide approximately $80,000 of net revenue each year to help support the operation of Seattle Center. The City receives a percentage of food, beverage, and merchandise sales. In addition, Festivals, Inc. pays fees to support grounds restoration and on-duty police at the event and reimburses the Center for its event-related labor and utility costs. Earlier festival closing times, implemented under previous agreements to improve crowd control, remain in effect under the new agreement.

The Bite of Seattle festival is a signature Seattle Center event, and this agreement continues this long-standing tradition for the City. Thank you for your consideration of this legislation. Should you have questions, please contact Ned Dunn at 684-7212 or Alex Bennett at 615-1827.

Sincerely,

Michael McGinn
Mayor of Seattle

cc: Honorable Members of the Seattle City Council

Michael McGinn, Mayor
Office of the Mayor
600 Fourth Avenue, 7th Floor
PO Box 94749
Seattle, WA 98124-4749

Tel (206) 684-4000
Fax (206) 684-5360
TDD (206) 615-0476
mike.mcginn@seattle.gov

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