

## OPERATION OF ICE ARENA SNACK BAR

THIS AGREEMENT made as of this 13<sup>th</sup> day of February 2022, between the City of Long Beach, located at City Hall, 1 West Chester Street, Long Beach, New York 11561 ("City"), and Twisted Beach Pretzels, Inc. d/b/a Philly Pretzel Factory, a New York State domestic business corporation located at 134 East Park Avenue, Long Beach, New York 11561 ("Contractor"), (hereinafter the City and Contractor may be referred to collectively as the "Parties")

That the Parties hereto agree as follows:

1. **AUTHORITY:** City Council Resolution No. 13/22 duly adopted on February 15, 2022.

### 2. CONTRACT INCLUDES:

- a) Operation of the Snack Bar located at the City of Long Beach Ice Arena, 150 West Bay Drive, Long Beach, New York 11561. The extent of the services and/or good to be provided are included in the City's Request for Proposals entitled "Snack Bar at City of Long Beach Ice Arena" dated January 4, 2022 ("RFP"), which is hereby incorporated into and made a part this Agreement.
- b) The Contractor shall file a list of all items to be sold and the prices to be charged ("Menu"). Unless otherwise stipulated, only food and beverages may be sold. No alcoholic beverages, drugs or other dangerous items shall be offered for sale. Should Contractor wish to alter the approved Menu, it is subject to the discretion of the Commissioner of the Recreation Department.
- c) The Contractor shall maintain the area around the food and beverage concession service in a clean and proper manner subject to violations being imposed. In the event the City has to clean the leased area, the Contractor will be responsible for the cost incurred by the City to perform same.
- d) The Contractor shall properly stow and dispose of garbage and trash in accordance with the City's Code of Ordinances and as directed by our Department of Sanitation.
- e) In the event the City finds Contractor is in violation of this agreement, then penalties shall be as follows:
  - \* 1st violation - Warning
  - \* 2nd violation - \$250 Payment to City's General Fund
  - \* 3rd violation - \$500 Payment to City's General Fund
  - \* 4th violation - TERMINATION OF THIS AGREEMENT

### 3. CONTRACT PAYMENT:

The Contractor shall pay to the City an annual fee of \$2,600 per year, for each of the two (2) years this agreement is in effect, with the rental fee for the second year to be paid prior to the commencement of the second year. Fifty (50%) percent of the first year's fee shall be paid upon execution of this agreement, payable by certified check or money order. If the Contractor wishes to exercise the renewal option pursuant to this agreement, and the City consents to renewal, the Parties agree to negotiate the amount of rent for each year of the renewal period.

#### **4. UTILITIES**

The Parties agree that Contractor will pay utility costs at a flat rate of \$100.00 per month for the first year of this agreement, for electric only. Prior to the start of the second year of this agreement, the Parties may renegotiate a new flat rate for utilities based upon Contractors actual usage and needs, subject to the discretion of the City. In the event this agreement is renewed, the parties agree to renegotiate, at the discretion of the City, the utility costs, for each year of the renewal period. The Contractor has represented to the City that it does not require gas/oil.

#### **5. TIME OF COMMENCEMENT AND COMPLETION**

The Contract shall be for the duration of two years commencing on March 1, 2022 and terminating on March 1, 2024. The City shall have the option to renew for two (2) additional two (2) year periods in its sole discretion. Said renewals shall only take effect upon a request in writing, received by the City no later than six (6) months prior to the expiration of the lease, and prior to the expiration of the first extension and that the rent to be paid during any extension shall be negotiated between the parties. For any extension period(s), the entire fee for each additional year of the extension period(s) must be paid in full prior to the commencement of each respective additional year. Rent to be paid during any extension shall be negotiated between the parties. The City reserves the right to not exercise these extensions for any reason whatsoever, and the Contractor agrees that they will abide by this rejection by the City of their request, and they will not seek any remedy, legal or otherwise.

#### **6. INDEMNIFICATION**

Neither the City nor any of its officers, employees, or agents, shall, in any manner, be liable for any loss or damage that may happen as a result or consequence of the work delineated in this Contract, or to any part or parts thereof. Nor shall the City be responsible for damage to any materials, equipment, or other property that may be used or employed therein, or placed upon the ground, during the performance of the work delineated in this Contract. Nor shall the City, its officers, employees, and/or agents be in any manner answerable, responsible, or liable for any injury done, or damages or compensation required to be paid, under any present or future law, to any person or persons whatever, whether employees of the Contractor or otherwise. Nor shall the City, its officers, employees and/or agents be answerable, responsible, or liable, for any damage to any property whether belonging to the City or others, occurring during or resulting from the work delineated in this Contract.

The Contractor shall properly guard against all such injuries and damages, and shall defend in any claim or action and indemnify and save harmless the City, its officers, employees, and agents, against all such injuries, damages, and/or compensation arising or resulting from causes, other than those actions arising from the sole negligence of the City.

Contractor shall, from the commencement of work pursuant to this Contract until its completion, maintain the insurance coverage policies, amounts, endorsements, and certifications as set forth in the RFP.

#### **7. PERMITS, LAWS, AND ORDINANCES**

Contractor shall keep itself fully informed of all municipal ordinances and regulations, state and federal laws that, in any manner, are relevant to the work herein specified, and any extra work contracted for by it, and shall at all times absolve and comply with and cause all his subcontractors, agents, and employees to observe and comply with said ordinances, laws, and regulations, and shall indemnify and save harmless the City, its officers, employees, and agents against any claim or liability arising from or based on the violation of any such laws, ordinances, or regulations. Contractor shall secure, at its own expense, all necessary permits from public authorities, shall give all notices required by law, regulations, or ordinances; shall pay all fees and charges incident to the due and lawful prosecution of the work covered by this contract, and shall otherwise comply with all local, state, and federal laws, regulations, and ordinances.

Without limiting any other provision of this paragraph, Contractor shall specifically obtain a Mercantile License from the City Clerk of the City of Long Beach. Contractor shall obtain and maintain all required Nassau County Department of Health Approvals/Permits where applicable.

#### **8. RECORDS OF ACCOUNTS**

The Contractor shall maintain full and complete books and records of accounts in accordance with accepted accounting practices and such other records as may be prescribed by the City Comptroller. Such books and records shall be retained for a period of seven (7) years and shall at all times be available for audit and inspection by the City Comptroller, the City's auditors and/or duly designated City representatives.

#### **9. NO ASSIGNMENT**

The Contractor shall have no right or power to assign this Contract, in whole or in part, without the written consent of the City Manager of the City of Long Beach, to be provided at the City Manager's sole discretion.

#### **10. SUB-LETTING**

No part of the work embraced in this Contract shall be sublet or in any way removed from the control of the Contractor under the direction and supervision of the City as aforesaid, except with the written consent of the City, but this provision shall not apply to the purchase and delivery of materials necessarily manufactured and provided elsewhere. The absence of such written consent shall not constitute a waiver of the City's right under this paragraph.

#### **11. RESPONSIBILITY OF CONTRACTOR FOR EMPLOYEES**

Staffing of the Ice Arena Snack Bar Concession shall be adequate at all times to provide proper service. Employment shall be obtained from local work forces as much as possible.

Background checks may be required for all Arena Snack Bar vendors and personnel, to be completed by the Long Beach Police Department at the expense of the Contractor.

Each and every employee of the Contractor, shall for all purposes be and be deemed to be the exclusive servants of the Contractor and not for any purpose, or in any manner, in the employment of the City. The Contractor shall in no manner be relieved from responsibility or liability on account of any party thereof, by any such employee, or any such subcontractor, or any material men whatsoever.

#### **12. LABOR LAW**

The Contractor agrees to comply with all provisions of the Labor Law of the State of New York (hereinafter "Labor Law"), including but not limited to all provisions relevant to the safety and protection of workers and the general public; working hours; wages and benefits; and workers' compensation. Failure of the Contractor to comply with any of the provisions of the Labor Law shall not relieve Contractor of any of its obligations pursuant to this Contract, but shall make the Contractor solely liable for any damages incurred as a result of non-compliance with the Labor Law.

The Contractor shall also be responsible for compliance with all laws, rules, and regulations applicable to its business in general and to safety in particular. The Contractor shall comply with all applicable provisions of the Code of Federal Regulation, the New York State Code of Rules and Regulations, and all other promulgations of federal, state, and local authorities. Contractor agrees to indemnify the City for all claims arising out of Contractor's failure to comply with any rule or law intended for the safety of any person.

#### **13. SPECIFICATIONS**

- a) The specifications in the RFP, which are incorporated herein by reference and forming a part of this contract are on file in the office of the City Purchasing Agent and are entitled "Snack Bar at City of Long Beach Ice Arena" dated January 4, 2022 ("RFP").
- b) This contract, the RFP, and the Contractor's response to the RFP collectively constitute the complete understanding between the parties.
- c) Contractor expressly acknowledges that he has reviewed the RFP's specifications and warrants and represents Contractor is fully familiar with all covenants, provisions and restrictions contained therein and Contractor agrees to abide by same.

#### **14. PREVAILING AUTHORITY**

In the event of any conflicting terms between the RFP, the RFP Response and this Agreement, the terms of this Agreement shall prevail, followed by the RFP, then the RFP Response.

#### **15. NOTICE**

Any notice hereunder shall be addressed to the Contractor at 134 East Park Avenue, Long Beach, New York 11561 and to the City at 1 West Chester Street, Long Beach, New York 11561, attention City Purchasing Agent.



executed the foregoing instrument; that he/she knows the seal of said Corporation; that the seal affixed to said instrument is such Corporate seal; that it was so affixed by order of the Board of Directors of said Corporation, and that he/she signed his/her name thereto by like order.