

LICENSE AND OPERATING AGREEMENT

THIS LICENSE AND OPERATING AGREEMENT (hereinafter the “Agreement”) dated the _____ day of _____, 2024, is by and between the **CITY OF STAMFORD** (hereinafter the “City”), a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut, and acting herein by Caroline Simmons, its duly authorized Mayor, and **OH MY GOSH LLC** (hereinafter the “Operator”), a domestic limited liability company with a principal place of business located at 1633 Washington Boulevard, 3F, Stamford, Connecticut, and acting herein by Jorge Perez-Echartea, its duly authorized Managing Member.

WITNESSETH

WHEREAS, The City owns Stamford Government Center at 888 Washington Boulevard, Stamford, Connecticut;

WHEREAS, The City issued Request for Proposals No. 2024.0283 for Management & Operation of Full Food Services at the Government Center Patio Café 1st & 4th Floor on February 8, 2024 (hereinafter the “City’s RFP No. No. 2024.0283”);

WHEREAS, The Operator submitted a proposal in response to the City’s RFP No. 2024.0283 on March 7, 2024 (hereinafter the “Operator’s Proposal”); and

WHEREAS, The City has accepted the Operator’s Proposal pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

2. CONTRACT DOCUMENTS AND SCOPE OF SERVICES. The Contract Documents consist of this Agreement and the following Exhibits that, combined, define the duties, functions, obligations, responsibilities, and tasks of the Scope of Services:

Exhibit A – The City’s RFP No. 2024.0283;
Exhibit B – The Operator’s Proposal;
Exhibit C – Forms Submitted with the Operator’s Proposal; and
Exhibit D – Floor Plans Depicting the Licensed Space;

all attached hereto and hereby made a part hereof as if fully set forth herein.

Additionally, the Operator shall provide, utilize and maintain, at its own expense, an online ordering application service throughout the Term of this Agreement, including any extension years.

Notwithstanding the foregoing, the City hereby waives the Operator's obligation to (i) maintain, repair or replace City equipment, as set forth in Section 2.12(a) of the City's RFP No. 2024.0283 or (ii) reimburse the City for the cost of electricity, as set forth in Section 2.14 of the City's RFP No. 2024.0283. Neither the City nor the Operator shall be obligated to maintain, repair or replace the City's equipment and the City shall not be responsible for any loss of property suffered by the Operator due to power loss or City equipment failure;

3. GRANT OF LICENSE. The City hereby grants to the Operator, for the Term or earlier termination of this Agreement, a non-exclusive, temporary, revocable license to use and occupy the kitchen on the 4th floor (hereinafter the "Kitchen") and an exclusive, temporary, revocable license to use and occupy the snack shop on the 1st floor (hereinafter the "Snack Shop") of Stamford Government Center at 888 Washington Boulevard, Stamford, Connecticut, as depicted in Exhibit D attached hereto, along with all the fixtures and equipment located thereon and therein, for only those purposes set forth in the Scope of Services, which Kitchen and Snack Shop are collectively referred to as the "Licensed Space." This grant of license shall not be deemed to constitute a lease or create or convey to the Operator a leasehold tenancy or possessory interest in or to the Licensed Space or create a landlord/tenant relationship between the City and the Operator;

4. ACCEPTANCE OF THE LICENSED SPACE AS-IS. The Operator hereby agrees, warrants and represents that (i) it has examined the Licensed Space, (ii) the Licensed Space is suitable for the Scope of Services, (iii) no agreements, promises, covenants, warranties or representations have been made by the City as to the condition of the Licensed Space upon which the Operator has relied on in entering into this Agreement and (iv) it agrees to take the Licensed Space as-is in its present and existing condition;

5. DAYS/HOURS OF OPERATION. The Operator shall provide the Scope of Services at the Snack Shop, Monday through Friday, from 7:00 a.m. through 4:00 p.m., except holidays as specified by the City's Director of Operations. No changes may be made to the days/hours of operation without the written consent of the City's Director of Operations;

6. LICENSE AND USE FEE. The Operator shall pay the City an annual license and use fee of Four Thousand Dollars (\$4,000.00) in advance on January 6th of each Year of the Term, including any extension years (hereinafter the "Annual License and Use Fee");

7. TERM. The Term of this Agreement shall commence on January 6, 2025, and terminate three (3) years thereafter. The parties may, by mutual agreement, extend the Term of this Agreement for two (2), additional years provided that all other terms of this Agreement remain the same. No such extension shall be for greater than one (1) year and,

under no circumstances, shall the entire Term of this Agreement, including any extension years, exceed five (5) years;

8. END OF TERM. Upon written notice from the City, the Operator shall timely cease its use of and vacate the Licensed Space at the expiration of the Term or earlier termination of this Agreement and return the Licensed Space to the City free of all the Operator's personal property and in good order and condition, except for reasonable wear and tear. Operator hereby agrees to indemnify, defend and save the City, its employees, directors, officers, agents, representatives and servants harmless from and against any and all claims, losses, damages, liabilities, costs and expenses arising or resulting from delay by the Operator in so ceasing, vacating and returning the Licensed Space to the City. If the Operator shall fail to timely cease its use of, vacate and return the Licensed Space to the City in the condition required under this Agreement, then the Annual License and Use Fee shall increase Five Hundred Dollars (\$500.00) for each month and for each portion of any month during which the Operator fails to cease its use of, vacate and return the Licensed Space to the City. The City and the Operator hereby agree that this increase represents fair market rental value of the Licensed Space. The aforesaid obligations shall survive the expiration of the Term or earlier termination of this Agreement;

9. OPERATOR'S REPRESENTATIVE AND KEY PERSONNEL. The following representative of the Operator is hereby authorized to act on behalf of the Operator with respect to the Scope of Services and shall have full authority to accept instructions, make decisions, communicate for and act on behalf of the Operator at all times:

Jorge Perez-Echartea, Managing Member.

In addition to the Operator's Representative, the following Key Personnel of the Operator shall be assigned to participate in and be available to the City for the Scope of Services:

Not applicable.

Neither the Operator's Representative nor the Key Personnel shall be replaced by the Operator without fifteen (15) days prior written consent of the City:

10. REPRESENTATIONS. The Operator represents that it is qualified in relation to the Scope of Services and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the Scope of Services, including any supplementary work. The Operator hereby acknowledges that the City has relied upon said representations in entering into this Agreement;

11. CAPACITY/INDEPENDENT CONTRACTOR. Operator is acting as an independent contractor and is not an employee of the City. This Agreement is for services only and does not create a partnership or joint venture between the Operator and the City. The City shall not be required to pay, or make any contribution to, any social security, local, state or federal tax, unemployment compensation, workers' compensation, insurance premium, profit-sharing, pension or any other employee benefit for the

Operator during the Term of this Agreement. The Operator is responsible for paying, and complying with reporting requirements for, all state, local, and federal taxes related to payments made to the Operator under this Agreement;

12. INDEMNIFICATION. The Operator shall indemnify, hold harmless and, at the City's option, defend the City, its officers, agents and employees, from third party claims for loss, cost, damage, liability, and/or injury to or death of a person, including the agents and employees of the Operator, or loss of or damage to property, resulting directly or indirectly from the Operator's negligent performance pursuant to this Agreement, or by any negligent omission to perform some duty imposed by law or this Agreement upon the Operator, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of suit, if applicable, shall not be limited by reason of any insurance coverage required pursuant to this Agreement, and shall survive the expiration of the Term or earlier termination of this Agreement;

13. INSURANCE. The Operator shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Requirements included in the City's RFP No. 2024.0283. The Operator shall be solely responsible for ensuring that its agents, including contractors and subcontractors, maintain insurance coverage at levels no less than those required of the Operator pursuant to this section;

14. LIMITATION OF LIABILITY. The Operator's sole remedy for City delays shall be an extension of time to complete the Scope of Services and the Operator hereby waives any claims for consequential damages, including, but not limited to, principal office expense, loss of financing, reputation and/or lost profit;

15. SOLE RISK OF OPERATOR. Any of the Operator's personal property in or on the Licensed Space shall be there at the sole risk of the Operator and the City shall not be liable for any damage thereto or theft, misappropriation or loss thereof. Immediately upon the expiration or sooner termination of this Agreement, Operator shall remove from the Licensed Space any and all personal property and repair any and all damage caused by such removal. Any personal property remaining in the Licensed Space after the expiration or sooner termination of this Agreement shall be deemed abandoned by Operator and may be removed and disposed of by the City without liability to the Operator at Operator's sole cost and expense, which shall be payable as additional license and use fees. The provisions of this Section shall survive the expiration of the Term or earlier termination of this Agreement;

16. MECHANIC'S LIENS. In the event that any mechanic's lien is filed against the City's property as a result of alterations, additions or improvements made by the Operator or the Operator's contractors or agents, the City, at its sole option, may pay the said lien provided that the City reasonably determines after inquiring into the validity thereof that the lien is valid and the amount claimed is due, and the Operator shall forthwith reimburse the City the total expenses incurred by the City in discharging the said lien, including reasonable attorneys' fees and costs;

17. NO SUB-LICENSE OR ASSIGNMENT. The Operator shall not sublicense, assign or transfer any portion of the Licensed Space or the Scope of Services without the prior written approval of the City's Director of Operations;

18. NO SUBCONTRACTING. Aside from those subcontractors disclosed in the Operator's Proposal, the Operator is prohibited from further subcontracting the Scope of Services or any part of it unless the City's Director of Operations approves such subcontracting in writing and approves, in writing, of the specific subcontractor(s) the Operator proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should the City approve of a proposed subcontractor, the Operator agrees to comply with the City of Stamford Code of Ordinances § 103.4;

19. REVIEW OF WORK. The Operator shall permit the City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

20. BOOKS AND RECORDS. The Operator shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to the Operator's demand for compensation by the City for a period of not less than three (3) years from the date of the final payment for work performed pursuant to this Agreement;

21. CONTRACT EXTRAS. Pursuant to the City of Stamford Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by the Operator that all contract extras regarding this Agreement shall be governed by the City of Stamford Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of the City of Stamford Charter and/or Code of Ordinances are fully complied with. The City of Stamford Charter and Code of Ordinances can be found at www.municode.com;

22. COMPLIANCE WITH CITY OF STAMFORD CODE PROVISIONS. The Operator hereby agrees to fully comply, to the extent applicable, with the requirements of the City of Stamford Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. The provisions of the City of Stamford Code of Ordinances can be found at www.municode.com;

23. COMPLIANCE WITH LAWS. The Operator shall be responsible for compliance with all applicable federal, state and local laws, rules, regulations, codes, orders, ordinances, charters, statutes, policies and procedures related to the Scope of Services.

24. CONFIDENTIALITY. During and after the term of this Agreement, the Operator, including, without limitation, its employees, agents, servants and representatives, shall not directly or indirectly disclose or make available to any person, firm, corporation, association or other entity for any reason or purpose whatsoever, or use or cause to be used in any manner adverse to the interest of the City, any financial, administrative or other confidential business information, except as is necessary to perform the Scope of Services or as may be require by law;

25. GIFTS. Pursuant to the City of Stamford Code of Ordinances, Sec. 103-26, et seq, during the Term of this Agreement, including any extensions, the Operator shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of the City of Stamford or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to the Operator shall include its members, officers, directors, employees, and owners of more than 5% equity in the Operator;

26. CODE OF ETHICS. The Operator is prohibited from using its status as a contractor to the City to derive any interest(s) or benefit(s) from other individuals or organizations and the Operator shall comply with the prohibitions set forth in the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances;

27. MORALS CLAUSE. Neither the Operator, the Operator's Representatives nor the Operator's key personnel shall commit any act or do anything which might reasonably be considered: (i) to be immoral, deceptive, scandalous or obscene; or (ii) to injure, tarnish, damage or otherwise negatively affect the community and/or the reputation and goodwill associated with the City. If the Operator, the Operator's Representative or the Operator's key personnel is accused of any act involving moral or ethical issues, dishonestly, theft or misappropriation, under any law, or any act which casts an unfavorable light upon its association with the community and/or the City or the Operator is accused of performing or committing any act which could adversely impact the Operator's events, programs, services, or reputation, the City shall have the right to terminate this contract upon fifteen (15) days written notice specifying the reason, within which period the Operator may cure such offense. The determination of whether and to what extent the offense is cured shall be made by the City at its sole discretion;

28. TERMINATION.

A. **TERMINATION FOR CAUSE, SANCTIONS AND PENALTIES.** If, through any cause, the Operator shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if the Operator shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement for cause by giving written notice to the Operator of such termination, specifying said cause and the effective date thereof, at least five (5) days before the effective date of such termination. Should the Operator fail to cure the stated cause within said five-day period, at the City's sole discretion, this Agreement shall be deemed terminated immediately and all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by the Operator pursuant to its performance under this Agreement shall, at the option of the City, become the City's property. The Operator shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Operator shall not be responsible for any claims resulting from the City's use of

the documents on another project or changes made to the documents without the Operator's express written permission;

The term "cause" includes, without limitation the following:

- 1) If the Operator furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If the Operator fails to perform to the City's reasonable satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or
- 3) If the City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should the City terminate this Agreement for cause, the Operator shall not be relieved of liability to the City for any damages sustained by the City by virtue of any breach of this Agreement by the Operator and the City may withhold any payment to the Operator for the purposes of setoff until such time as the exact amount of damages due the City from the Operator is determined. Further, if applicable, the City shall have the right to:

- 1) Complete the Scope of Services, or any part thereof, either by itself or by other contractors, at the expense of the Operator;
- 2) Purchase the products or services that are the subject of this Agreement elsewhere and hold the Operator responsible for any increase in cost;
- 3) Pursue any equitable remedy, including, but not limited to, specific performance or injunction; and/or
- 4) Disqualify the Operator from bidding on, submitting proposals for, or being awarded any City contract for a period not to exceed two (2) years from the date of such termination;

B. TERMINATION FOR CONVENIENCE. The City may terminate this Agreement at any time the City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to the Operator and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of the City, become property of the City. The Operator shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination;

29. CLAIMS FOR DAMAGES. Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage;

30. DISPUTE RESOLUTION.

A. EXECUTIVE MEETING. The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”).

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

B. MEDIATION. Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator’s fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall, in the sole discretion of the City, be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

- D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by the City, the Operator shall continue performance under this Agreement while matters in dispute are being resolved.

31. SETOFF OF PROPERTY TAXES OWED TO THE CITY OF STAMFORD.

Pursuant to the City of Stamford Code of Ordinances Section 23-18.4.1 and Section 12-146b of the Connecticut General Statutes, as amended, the Operator hereby acknowledges that the City shall have the right to set-off or withhold any payment, or portion thereof, due to the Operator pursuant to this Agreement if any taxes levied by the City of Stamford against any property, both real and personal, owned by the Operator are delinquent and have been so delinquent for a period of not less than one year. Any amount withheld from the Operator pursuant to this section shall be applied to the Operator's delinquent taxes, provided, however, that no such amount withheld shall exceed the amount of tax, plus penalty, lien fees and interest, outstanding at the time of withholding;

32. NON-APPROPRIATION. The Operator acknowledges that the City is a municipal corporation, that the City's obligation to make payments under this Agreement is contingent upon the appropriation by the City of Stamford Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect;

33. GOVERNING LAWS AND VENUE. The parties deem this Agreement to have been made in the City of Stamford, State of Connecticut. Both parties agree that it is fair and reasonable for the validity and construction of the Agreement to be, and it shall be,

governed by the laws and court decisions of the State of Connecticut, without giving effect to its principles of conflicts of laws. To the extent that these courts are courts of competent jurisdiction, for the purpose of venue, the complaint shall be made returnable to the Judicial District of Fairfield, at Stamford, only or shall be brought in the United States District Court for the District of Connecticut only, and shall not be transferred to any other court. The Operator hereby waives any objection which it may now have or will have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding;

34. INTERPRETATION. The City, in its sole discretion, shall determine the terms and/or document(s) which shall prevail and take precedence in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits;

35. NON-WAIVER. The failure of the City to insist upon strict performance of any of the terms, conditions or covenants herein shall not be deemed a waiver of any rights or remedies that the City may have; and shall not be deemed a waiver of any subsequent breach or default of the terms, conditions or covenants herein contained. The City reserves the right to require strict compliance therewith at any time, with or without notice, except as may be otherwise required herein; and

36. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The counterparts shall together constitute but one Agreement. Any signature on a copy of this Agreement or any document necessary or convenient thereto sent by facsimile, PDF or other electronic format shall be binding upon such transmission and the facsimile, PDF or other electronic format copy shall be deemed an original for the purposes of this Agreement. Paper copies or "printouts," if introduced as evidence in any judicial, arbitral, mediation or administrative proceeding, will be admissible as between the parties to the same extent and under the same conditions as other original business records created and maintained in documentary form. Neither party shall contest the admissibility of true and accurate copies of electronically signed documents on the basis of the best evidence rule or as not satisfying the business records exception to the hearsay rule.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK. SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written. Signed, sealed and delivered in the presence of:

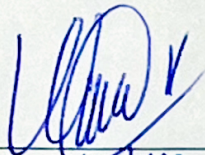
CITY OF STAMFORD

Print:
Witness

By: _____
Caroline Simmons, Mayor

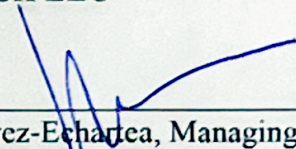
Date: _____

Print:
Witness




Print: Wilman Canas
Witness

OH MY GOSH LLC


By: _____
Jorge Perez-Echarrea, Managing Member

Date: 10/29/2024



Print: MARIA SOSA
Witness

Approved as to Form:

Approved as to Insurance:

Chris Dellaselva
Asst. Corp. Counsel

David Villalva
Risk Manager

Date: _____

Date: _____