LB
01/28/16
Item No. 19

AN ORDINANCE 2016-01-28-0031

AUTHORIZING AND APPROVING A FOOD SERVICE AGREEMENT WITH SMG FOOD AND BEVERAGE, LLC, DBA SAVOR BLACK TIE JOINT VENTURE, FOR THE ALAMODOME FROM MARCH 1, 2016 THROUGH FEBRUARY 28, 2031.

* * * * *

WHEREAS, the proposed Food Services Agreement for the Alamodome covers all food and beverage service on an exclusive basis for events held in the Alamodome, including the rights to provide non-alcoholic and alcoholic beverage services, non exclusive services customarily related to catering, and non-exclusive merchandise or novelty sales and services; and

WHEREAS, the City issued a Request for Proposals on July 31, 2015 and three proposals were received and evaluated by the eight-member Evaluation Committee;

WHEREAS, the Evaluation Committee elected to interview all three respondents and recommends contracting with SAVOR Black Tie Joint Venture, the firm receiving the highest evaluation: **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The terms and conditions of the Food Service Agreement with SMG Food and Beverage, LLC, dba SAVOR Black Tie Joint Venture ("SAVOR"), for catering and concession services at the Alamodome, for the period March 1, 2016 through February 28, 2031, are authorized and approved. The City Manager, or her designee, is authorized to execute the Agreement, previously executed by SAVOR, attached to this Ordinance as **Exhibit I**.

SECTION 2. Funds generated by this Ordinance in the amount of $1,600,000.00 for concession stand improvements will be deposited in Fund 29018000, Internal Order 245000000003 and General Ledger 4401810.

SECTION 3. Funds generated by this Ordinance for concessions and sales will be deposited per the table below:

	Fund	Internal Order	General Ledger
Commission Concession	29016000	245000000030	4407731
Commission Catering	29016000	245000000030	4407732
Commission Novelty Merchandise	29016000	245000000030	4407709

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

SECTION 5. This Ordinance shall take effect immediately upon the receipt of eight affirmative votes; otherwise it shall be effective ten days after its passage.

PASSED AND APPROVED this 28th day of January, 2016.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

Agenda Item:	**19 (in consent vote: 4, 5, 7A, 7B, 9, 10A, 10B, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 30)**
Date:	01/28/2016
Time:	09:20:26 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a Food Services Agreement with SMG Food and Beverage, LLC for concessions and catering services at the Alamodome from March 1, 2016 through February 28, 2031 with no renewal option for an estimated annual revenue to the City of $2,800,000.00. [Carlos Contreras, Assistant City Manager; Michael Sawaya, Director, Convention & Sports Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Treviño	District 1		x				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6	x					
Cris Medina	District 7	x					
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

EXHIBIT 1

FOOD SERVICE AGREEMENT FOR THE ALAMODOME

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation (hereinafter referred to as "City"), acting by and through its City Manager pursuant to Ordinance No. 2016__ – ___ – ___ – _____, dated _____ __, 2016, and SAVOR Black Tie Joint Venture, by and through its majority partner, SMG Food and Beverage, LLC, (hereinafter referred to as "Concessionaire"), both of which may be referred to herein collectively as the "Parties".

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishments of the tasks hereinafter described.

RECITALS

WHEREAS, City owns and operates, through its Convention and Sports Facilities Department (CSF), the Alamodome (hereafter "Facility"); and

WHEREAS, the Facility is made available to the public through short-term license agreements for a variety of events, to include sporting events, concerts and family shows; and

WHEREAS, such events may require Catering and Concession Services and therefore, City sought, through a Request for Proposals (RFP), to contract for the provision of such services for events held at the Facility; and

WHEREAS, Concessionaire submitted a proposal to City to provide such services, which included a financial compensation component; and

WHEREAS, City, through a duly authorized City ordinance, accepted Concessionaire's proposal and the Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described; **NOW THEREFORE:**

ARTICLE I. DEFINITIONS

1.01 "Accounting Period" – A calendar month.

1.02 "Agreement Year" – the period March 1, 2016, through February 28, 2017, and every March 1st through February 28th for every year thereafter until February 28, 2031, or until the Agreement terminates, whichever is earlier.

1.03 "Alcoholic Beverages" – all alcoholic drinks, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.

1.04 "Ancillary Services" – other services customarily provided with Catering Services including, but not limited to, floral decorations, event Equipment rentals, and entertainment, except meeting planning services (destination management), and transportation services to and from the Facility.

1.05 "Branded Products" – those food or beverage items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Concessionaire is required to pay royalty fees and/or shared advertising costs (Branded Product Fees) to the franchiser in consideration of the right to sell such items in the Facility.

1.06 "Catering Sales" – all sales for any pre-arranged food and beverage function of multiple Licensees, such as dinners, banquets and buffets, where payment for the entire function rests with one individual or company, including cash bars associated with the function.

1.07 "City" – the City of San Antonio, Texas, the owner of the Alamodome, or its Designee. All correspondence should be addressed to Director, Convention and Sports Facilities, P.O. Box 1809, San Antonio, TX 78296-1809.

1.08 "City's Director" – the Director of City's Convention and Sports Facilities Department (CSF) or his/her designee, as applicable.

1.09 "Commission" – the percentage of Gross Receipts that Concessionaire pays City.

1.10 "Concessionaire" – SAVOR Black Tie Joint Venture, a joint venture between SMG Food and Beverage, LLC and Black Tie Affairs Catering, Inc.. The SAVOR Black Tie Joint Venture organization is as described in Exhibit B Concessionaire's Articles of Incorporation and Joint Venture Agreement, which is attached and incorporated into this Agreement. No change to Exhibit B may be made without the written consent of City acting by and through the City's Director.

1.11 "Concessions Sales" – all sales of non-licensed food and beverages sold to individual customers from permanent or portable concession stands, roving vendors and in-seat attendants, except cash-bar sales at private events (i.e. not open to the general public), which are considered Catering Sales.

1.12 "Equipment" – all Food Service furniture, machinery, and POS used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product.

1.13 "Facility" – the Alamodome and grounds, located at 100 Montana St., San Antonio, TX 78203 in Bexar County.

1.14 "Food Service" – all food and beverage sales, service and operations at the Facility, including Alcoholic Beverage Sales, Branded Product Sales, Catering Sales, Concession Sales, Subcontractor Sales, Suite Sales, labor services and Restaurant Sales.

1.15 "Gross Receipts" – the total amount of money, service, administrative and rental charges received or charged by Concessionaire or any agent, employee or Subcontractor of Concessionaire for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding applicable sales and TABC taxes. Sales from City-sponsored events (less the discount provided in Section 19.04), cash shortages, and uncollected debts may <u>not</u> be deducted from Gross Receipts. In case of a discrepancy in determining Gross Receipts for Catering and Concessions Sales, it shall be the greater of inventory, POS readings, or actual cash and credit card charges received.

1.16 "Late Fee" – the charge assessed to Concessionaire by City for any payments due City after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of 18%.

1.17 "Licensee" – any person or entity that may, from time to time, enter into any agreement for the use of the Facility for a particular purpose.

1.18 "Major Event" – annual non-recurring events with attendance in excess of 40,000, including without limitation the 2018 NCAA Men's Final Four Basketball Tournament, but excluding the Alamo Bowl.

1.19 "Merchandise Sales" – all sales of all non-edible souvenirs, novelties and publications at the Facility on behalf of Licensees.

1.20 "POS" – or point-of-sale, were a sales transaction is conducted and a customer purchases a good or service and makes payment from a business that calculates the amount due and provides for payment processing options.

1.21 "Restaurant Sales" – all sales of food and beverages from the Top of the Dome and Hall of Fame Club sold by wait staff to individual customers who eat meals prepared and served at the Facility.

1.22 "Smallwares" – service ware, utensils, crockery, glassware, dishware and cutlery used in the Food Service operation. Concessionaire is responsible for having service and place settings for 500 throughout the Agreement term as well as Smallwares for all Bars, Concessions, Restaurants and Suites.

1.23 "Service Charge" – an additional percentage or fee added to Catering Services by Concessionaire, including labor and other miscellaneous operating costs, whether paid to the employees or not. Service Charges are <u>included</u> in Gross Receipts.

1.24 "Subcontractor" – as defined in Section 28.01 (gg).

1.25 "Suite Sales" – all sales of food and beverages from Suites on the Club Level of the Facility.

1.26 "TABC" – Texas Alcoholic Beverage Commission.

ARTICLE II. TERM

2.01 Unless sooner terminated in accordance with the provisions herein, the Initial Term of this Agreement shall be 15 years and shall commence on March 1, 2016, ("Commencement Date"), and expire on February 28, 2031 ("Expiration Date").

ARTICLE III. SCOPE SERVICES

3.01 City hereby grants to Concessionaire: a) exclusive rights to provide Food Service; b) non-exclusive rights to provide Ancillary Services, and; c) non-exclusive rights to provide Merchandise Sales services, at the Facility, with the exception of those events and items identified in Section 3.03 and those instances where Caterer is unable to perform due to emergency circumstances, inclement weather, or any other circumstances that the City and Concessionaire mutually agree warrant the City to permit a Licensee of the Facility to provide its own Food Service at the Facility. These rights extend to all portions of the interior and exterior of the Facility that are operated or under the control of the City and used in conjunction with the Facility. Concessionaire shall perform the services identified in Exhibit A City's Request for Proposals, which is attached and incorporated into this Agreement in accordance with Concessionaire's best practices as further described in Exhibit C Concessionaire's Food Service Implementation Plan, which is attached and incorporated into this Agreement.

3.02 Concessionaire shall be responsible for conducting the Food Service operations at the Facility in accordance with Exhibit C Concessionaire's Food Service Implementation Plan (submitted as Concessionaire's Proposed Plan in response to the RFP) including, but not limited to, implementing and maintaining all of the following proposed programs and concepts (minimums and quotas are calculated upon and assume a capacity event, and may be reduced as appropriate in the case on a non-capacity event, subject to City approval):

(a) Quality Control Plan including:

(i) SAVOR Black Tie Secret Shopper Program and reporting the results to City at least two (2) times annually;

(ii) Customer k'nekt expanded customer feedback/survey system, including QR coding or other acceptable technology approved by City;

(iii) SAVOR Black Tie Safe Food and Safe Beverage programs, including Alcohol Policy Compliance Report; and

(iv) SAVOR Black Tie Quality Management Assurance Program.

(b) Key Performance Indicators including Annual Report to City, with the content of the report to be determined by City. This report should measure and summarize the year's F&B activity, highlight the successes, consolidate and provide analysis of feedback results, and outline the plan and implementation process related to new concepts and trends for the upcoming year.

(c) Proposed Menus

(d) Branded, Local and Subcontracted Products Plan

(i) The use of Los Barrios, Earl Abels, and The Big Bib BBQ points-of-sale as per Section 3.08; and

(ii) The use of national subcontract arrangements.

(e) Food Services Spaces Plan including:

(i) The use of Concessionaire's private label branding program; and

(ii) Minimum of ninety (90) new portable Concessions carts in accordance with Section 33.01. The placement of all stands and carts must be approved by City.

(f) Technology Plan including new POS System with minimum 400 POS units per Sections 18.06 and 33.01.

(g) Organizational Plan including:

(i) Not-for-Profit web-based recruitment program;

(ii) Organizational charts;

(iii) Human resources policies and procedures;

(iv) Employee training; and

(v) Banquet operations training guide.

(h) Staffing Plan including staffing guidelines.

(i) Training Program Plan including:

(i) Customer k'nekt training;

(ii) Safety training;

(iii) Sanitation training;

(iv) Equipment training;

(v) Alcohol service training; and

(vi) Food safety audits.

(j) Event Information Recaps including:

(i) Single event sales recap;

(ii) Monthly statistical information; and

(iii) Monthly event executive summary.

(k) Maintenance Plan

(l) Marketing Plan including:

(i) Annual marketing fund;

(ii) Creative menu and program development, including the use of other local branded products;

(iii) The use of advertising and communications company for: strategic planning; experiential marketing; public relations; marketing communications, including interactive, online and print communications, advertising and social media; event management, and; measurement;

(iv) In-seat ordering, including downloadable ordering application as required;

(v) Hawking;

(vi) Marketing, advertising and promotions including: proactively partnering with the facility sales team and Visit San Antonio to expand target markets and utilize shared marketing efforts to showcase the facility, as well as food and beverage services; building upon the strong relationships Black Tie Affairs has in the community to promote the new food service program at the Dome; researching the buying habits and preferences of customers to adapt local buying partners and national brands, with a particular focus on regional favorites; implementing promotions, menu development, market analysis/ tracking, branding, sales collateral, surveys and involvement in industry-appropriate organizations; creating marketing sponsorship packages, and; expanding food and beverage local partnerships with the Facility;

(vii) Expanding on existing stakeholder opportunities with UTSA, UIL, Alamobowl, San Antonio Sports, and Final Four, including creating custom programs and promotions;

(viii) Creating Hall of Fame Club;

(ix) Promoting the Hall of Fame Club and Skyline Lounge with enticing programs and inclusive packages;

(x) Non-event day business development;

(xi) Implementation of Plaza events and festivals;

(xii) Generation of concerts and events;

(xiii) Illusions Theater program development;

(xiv) Social media including e-marketing and social media integration, and e-campaigns and promotions;

(xv) Creation of family activities;

(xvi) Group sales;

(xvii) Media;

(xviii) Promotional activities;

(xix) Visit San Antonio;

(xx) Industry participation; and

(xxi) Integrated website

(m) Service Plan including:

(i) Suites and Catering, including maintaining a 1:2 Suite server to patron ratio;

(ii) Concessions, including: delivering speed of service; increasing points-of-sale to maximum levels; achieving a 1:140 POS to patron ratio; deploying a minimum of 400 points-of-sale and 200 hawkers to the extent necessary based on attendance; eliminating the need for patrons to sign credit card receipts for transactions under $50.00;

(iii) Capturing sales;

(iv) Line queuing;

(v) Activating the "To the Top" hawking program;

(vi) In-seat waiter/waitress service to Club seat-holders;

(vii) Food space upgrades;

(viii) Plaza exterior plan; and

(ix) Sustainability and recycling programs.

3.03 Concessionaire understands the following events, areas and/or menu items are exempted from the exclusive nature of this Agreement and that the consent of Concessionaire to allow other persons or companies to provide Food Service at the Facility is not required:

(a) Feld Entertainment events (competing concessions food items, which promoter has exclusivity to sell, such as popcorn, peanuts, sno-cones, cotton candy, frozen lemonade and merchandise);

(b) Backstage, upon promoter or Licensee request, at the sole discretion of City;

(c) Offices, locker rooms, dressing rooms, or in any area of the Facility during non-events, other than assigned service areas, may be excluded at the sole discretion of the City;

(d) Additional events at City Director's discretion, approximately three events annually.

(e) Unique Catering requirements of individual event Licensees, such as Kosher, Indian and other ethnic foods, not regularly prepared by Concessionaire, may be excluded from these rights, at the sole discretion of the City.

(f) Vending machines are excluded and the City reserves the right to place vending machines in any employee area of the Facility.

3.04 Concessionaire agrees to provide all services and other activities as specified herein and as are required to perform Food Service at the Facility.

3.05 Concessionaire understands that customer service is of utmost importance to City. All services provided under this Agreement shall be performed by Concessionaire in a manner that supports City's goal to provide superior customer service. Concessionaire shall conduct surveys of patrons and Suite Licensees and shall share the results with City within 15 days of receipt. Format of surveys and distribution is to be approved by the City in advance.

3.06 City's Director shall notify Concessionaire of any unacceptable levels of service and undesirable practices and Concessionaire shall immediately remedy service deficiencies and/or discontinue the undesirable practices promptly.

3.07 Concessionaire shall constantly endeavor to improve the Food Service with a view toward developing maximum sales and service and to promote the marketing of the Facility to Licensees and potential Licensees and patrons of the Facility.

3.08 Concessionaire shall enter licensing agreements with local restaurants Los Barrios, Earl Abels, The Big Bib BBQ etc. in accordance with Exhibit C, which will provide the following:

(a) Los Barrios, Earl Abels. and The Big Bib BBQ will each have a minimum of three (3) hard (fixed) locations within the Facility and, at each location, their individual restaurant/brand names will be graphically depicted and represented according to their individual restaurant guidelines.

(b) Menu offerings within these locations will be brand specific to the restaurant/brand and will be sold under a licensing agreement to maintain the original brands flavors, product specifications and quality.

(c) Such licensing agreements ("Licensing Agreement(s)") shall be in effect for the duration of this Agreement subject to the terms of each individual Licensing Agreement.

(d) If any such Licensing Agreements are not in effect for the entire term of this Agreement, Concessionaire must replace that entity with another local entity approved by City.

ARTICLE IV. COMPENSATION TO CITY

4.01 Concessionaire shall provide City a payment of $1,600,000.00 ("Investment") for the rights to this Agreement payable as follows: $1,600,000.00 on or before March 1, 2016.

4.02 Concessionaire shall pay City on a monthly basis no later than the fifteenth (15th) calendar day of the month following the preceding month's activity, the following commissions:

(a) For annual Concessions & Bar Sales between $0 and $3,000,000 a commission in the amount of 40%, and for annual Concessions & Bar Sales in excess of $3,000,001 a commission in the amount of 44% on the increment; and

(b) For Catering Sales (including Restaurant Sales, Ancillary Services, & Service Charges), a commission in the amount of 32.5%; and

(c) For Suite Sales, a commission in the amount of 32.5%; and

(d) For Major Events, a bonus commission (above standard commission) in the amount of 3%; and

(e) For Subcontractor sales, a commission in the amount of 30%; and

(f) For Merchandise Sales, when City requests Concessionaire to sell Merchandise, City retains 100% of net profits after Concessionaire earns a management fee of 3% of Gross Receipts.

(g) For any payments not made as required under Section 4.02, Concessionaire shall pay City all amounts due together with interest at the rate of 18% per annum (but in no event greater than the maximum legal rate allowed under applicable law) from the date payment should have been made until payment is received by City.

4.03 It is understood by Concessionaire that all commissions due City shall be calculated from the amount actually billed to the Licensee, or, in the event Food Services are provided to an organization or group of individuals attending an event of a Licensee, the amount actually billed to that organization or group of individuals, for all events held in the Facility where Food Services are performed (i.e. Licensee is charged all-inclusive price of $200/person for an event).

4.04 Concessionaire agrees that it shall not barter, trade, or discount any or all Food Service provided by Concessionaire under this Article that are commissionable to City, without the prior written approval of City's Director.

4.05 It is the responsibility of Concessionaire to request prior written approval from City's Director for any additional charges to a Licensee, including, but not limited to, convenience charges, surcharges, etc., which are assessed any Licensee. An explanation of the additional fees/charges shall accompany the request. It is in the sole discretion of City's Director to approve or deny Concessionaire's request for additional charges to Licensees.

4.06 City's Director may waive or reduce commissions for Food Service if it is in the best interest of City.

ARTICLE V. USE OF FACILITY AND EQUIPMENT

5.01 City shall provide Food Service locations, existing Equipment, including portable carts, and the eight new Plaza Level Concession stands in good working order. Concessionaire may not change locks or alter locks without City's Director approval.

5.02 Concessionaire shall use City's Facility and Equipment made available to Concessionaire under this Agreement solely for the purpose of providing services to customers and Licensees of City that are at the Facility as set forth herein, except as authorized in writing by City's Director. The use of City's Facility and Equipment shall comply with City's standards of quality and service mentioned in this Agreement.

5.03 Any visitors to the Facility (other than vendors, suppliers, representatives of Licensees of the Facility, Licensees, or invitees or potential Licensees of the Facility) must have permission by City's Director before access will be granted to the Facility.

ARTICLE VI. FOOD SERVICE IMPLEMENTATION PLAN

6.01 Concessionaire has submitted Exhibit C Food Service Implementation Plan as a guide to its current and future business practices. Exhibit C shall be utilized by Concessionaire throughout the Term of this Agreement, and may be amended to accurately depict Concessionaire's Food Service operation for the upcoming year. Such amendments require the approval of City's Director.

6.02 Concessionaire shall provide exterior Food Service for the outside area of the Facility for all events in which estimated attendance exceeds 10,000, unless otherwise directed by City. Such Food Service shall be provided as set forth in Exhibit C Concessionaire's Food Service Implementation Plan.

ARTICLE VII. EMPLOYEES AND PERSONNEL

7.01 Concessionaire shall employ or secure the employment of all necessary personnel to conduct the operations at the Facility in accordance with the terms and conditions of this Agreement.

7.02 Concessionaire will be required to conduct criminal background checks on all full and part-time staff, not-for-profit group labor, and temporary staff, and to utilize staffing agencies that do so as well for all temporary labor. This extends to all Subcontractors that may have personnel entering the Facility.

7.03 All service employees are employees of Concessionaire and not City. Concessionaire shall at all times be an independent contractor, and the Agreement shall not in any way create or form a partnership or joint venture with City. No agent, servant, or employee of Concessionaire shall under any circumstances be deemed an agent, servant, or employee of City.

7.04 Accurate records must be kept of the names, addresses and other legal identification of those to whom badges are issued to assure proper identification and legal working status of employees at any time required by City or any other proper agency. Upon request by City, Concessionaire shall immediately remove, from the Facility, any employee deemed unsuitable for any reason by City. Any employee so removed shall never again be employed at the Facility without the prior written consent of City.

7.05 City shall approve Concessionaire's proposed on-site management indicated below throughout the term of the Agreement. Concessionaire's on-site management shall not have job-related responsibilities at other venues and must have a full-time office at the Facility. If City requests a replacement for the on-site management or any of the staff, Concessionaire shall have five days to provide a temporary replacement approved by the City, and 15 days to provide City with at three resumes of suitable candidates for such purpose. At no time however, shall Concessionaire leave the Facility

without management staff suitable to the service required for any scheduled event. Concessionaire must employ the following positions to provide services under this Agreement for the entire term:

Director of Food & Beverage
Assistant Director of Food and Beverage
Premium Manager
Catering Sales Manager
Catering Services Manager
Concessions Manager
Warehouse Manager
Executive Chef
Sous Chef
Controller / Office Manager
Human Resources & Training Manager
Accountant
Staffing Coordinator

7.06 Concessionaire shall not change its Food and Beverage Manager without the City's approval, such approval not to be unreasonably withheld, unless requested by City, for a minimum of three years, from the time the Food and Beverage Manager is approved by City.

7.07 Concessionaire's management staff shall include an on-site Catering Sales Manager to market, solicit and administer Catering programs for the Facility

7.08 Concessionaire must conduct regularly scheduled training sessions throughout the year for all employees, including not-for-profit groups. At a minimum, the training will consist of customer service; alcohol awareness (i.e. "TIPS"); skills training for each position, including proper suite and banquet service, buffet set-up, merchandising and wine service for all Catering personnel; POS training; safety; cash handling; food preparation; recycling and the City's customer service training

7.09 Concessionaire's employees shall be neatly, identifiable and cleanly uniformed at all times and must meet grooming guidelines and appearance standards prescribed for such employees.

7.10 10 free parking spaces will be provided by City for Concessionaire's management staff.

7.11 Concessionaire shall immediately report any theft or misuse of funds by its personnel

ARTICLE VIII. ASSIGNED AREAS

8.01 City shall provide Concessionaire access to and control over assigned service areas throughout the term of this Agreement. City may inspect the assigned service areas whenever, in its sole discretion, it deems appropriate.

8.02 City shall not be responsible under any circumstances for loss or damage to Concessionaire's supplies, materials, or Equipment at the Facility, or to any improvements made to the Facility by Concessionaire, or to any personal belongings of Concessionaire, or Concessionaire's personnel brought into the Facility, unless such loss or damage is directly caused by City, its officers, agencies, employees, officials or contractors.

ARTICLE IX. INSURANCE

9.01 Prior to the commencement of any work under this Agreement, Concessionaire shall furnish copies of all required endorsements and completed certificate(s) of insurance to the City's Convention and Sports Facilities Department, which shall be clearly labeled "**Concessions and Catering for the Alamodome**" in the description of operations block of the certificate. The certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. City will not accept a memorandum of insurance or binder as proof of insurance. The certificate(s) must be signed by the authorized representative of the carrier, and list the agent's signature and phone number. The certificate shall be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to City. City shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by City's Convention and Sports Facilities Department. No officer or employee, other than City's Risk Manager, shall have authority to waive this requirement.

9.02 City reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will City allow modification whereby City may incur increased risk.

9.03 A concessionaire's financial integrity is of interest to City; therefore, subject to Concessionaire's right to maintain reasonable deductibles in such amounts as are approved by City, Concessionaire shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at Concessionaire's sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate per project, or its equivalent in Umbrella or Excess Liability Coverage f. $300,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence
5. Commercial Crime Policy	$100,000 per occurrence
6. Umbrella/Excess Policy	$10,000,000 per occurrence
7. Liquor Legal Liability	$10,000,000 per occurrence, or its equivalent in Umbrella or Excess Coverage

9.04 At the discretion of the Concessionaire, any Subcontractors and/or suppliers providing goods or services hereunder may be required to obtain the same categories of insurance coverage required of Concessionaire herein, and provide a certificate of insurance and endorsement that names the Concessionaire and the City as additional insureds. Policy limits of the coverages carried by Subcontractors will be determined as a business decision of Concessionaire. Concessionaire shall provide City with said certificate and endorsement prior to the commencement of any work by the

Subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the Agreement for all purposes.

9.05 As they apply to the limits required by City, City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Concessionaire shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Concessionaire shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Convention & Sports Facilities
Attn: Fiscal Division
P.O. Box 1809
San Antonio, Texas 78296-1809

9.06 Concessionaire agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

a. Name City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;

b. Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where the City is an additional insured shown on the policy;

c. Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City

d. Provide advance written notice directly to City of any suspension or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.07 Within five calendar days of a suspension, cancellation or non-renewal of coverage, Concessionaire shall provide a replacement certificate of insurance and applicable endorsements to City. City shall have the option to suspend Concessionaire's performance should there be a lapse in coverage at any time during this Agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.08 In addition to any other remedies City may have upon Concessionaire's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, City shall have the right to order Concessionaire to stop work hereunder, and/ or withhold any payment(s) which become due to Concessionaire hereunder until Concessionaire demonstrates compliance with the requirements hereof.

9.09 Nothing herein contained shall be construed as limiting in any way the extent to which Concessionaire may be held responsible for payments of damages to persons or property resulting from Concessionaire's or its Subcontractors' performance of the work covered under this Agreement.

9.10 It is agreed that Concessionaire's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of City shall be limited to insurance coverage provided.

9.12 Concessionaire and any Subcontractors are responsible for all damage to their own equipment and/or property.

ARTICLE X. INDEMNIFICATION

10.01 CONCESSIONAIRE covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, CITY and the elected officials, employees, officers, directors, volunteers and representatives of CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to CONCESSIONAIRE'S activities under this AGREEMENT, including any acts or omissions of CONCESSIONAIRE, any agent, officer, director, representative, employee, consultant, volunteer or Subcontractor of CONCESSIONAIRE, and their respective officers, agents employees, directors and representatives while in the exercise of performance of the rights or duties under this AGREEMENT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT CONCESSIONAIRE AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.02 The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

10.03 CONCESSIONAIRE shall advise CITY in writing within 24 hours of any claim or demand against CITY or CONCESSIONAIRE known to CONCESSIONAIRE related to or arising out of CONCESSIONAIRE'S activities under this AGREEMENT.

10.04 Defense Counsel – City shall have the right to select or to approve defense counsel to be retained by Concessionaire in fulfilling its obligation hereunder to defend and indemnify City, unless such right is expressly waived by City in writing. Concessionaire shall retain City approved defense counsel within seven (7) business days of City's written notice that City is invoking its right to indemnification under this Agreement. If Concessionaire fails to retain counsel within such time period, City shall have the right to retain defense counsel on its own behalf, and Concessionaire shall be liable for all costs incurred by City. City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

10.05 Employee Litigation – In any and all claims against any party indemnified hereunder by any employee of Concessionaire, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation herein provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Concessionaire or any Subcontractor under worker's compensation or other employee benefit acts.

ARTICLE XI. QUALITY OF SERVICES AND PRODUCTS

11.01 Concessionaire shall conduct all of their operations in a first-class, professional, businesslike and efficient manner consistent with other premier stadiums.

11.02 City shall have the right to approve what portions, pricing and brands are used by the Concessionaire, and at no time will Concessionaire offer an exclusive to any supplier without the prior written approval of City. City shall not unreasonably withhold approval, including approval of market-competitive pricing.

11.03 All foods, drinks, beverages, confectionery, refreshments, etc., sold or kept for sale, shall be fresh quality, wholesome, and pure, and shall conform in all respects to federal, state, and municipal food and other laws, ordinances and regulations. No imitation, adulterated or misbranded article shall be sold or kept for sale, and all product in inventory shall be stored and handled in a sanitized manner. Leftover perishable product shall not be sold at any time.

11.04 All products for sale shall be subject to inspection and approval by City. Rejected product shall be immediately removed from the Facility and shall not be sold.

11.05 City requires Concessionaire to identify and utilize local products and subcontractors, whenever appropriate and available.

11.06 It is the intent of City to utilize Branded Products whenever it is in the best interest of City and its Licensees.

11.07 All Concessions, Restaurant and Suites will generally utilize disposable plates, cutlery and cups.

11.08 All Catering will utilize permanent Smallwares, dishes, glassware and place settings or disposables (if requested by customers).

ARTICLE XII. ALCOHOLIC BEVERAGES

12.01 Alcoholic Beverages are to be offered for sale by Concessionaire to the extent permitted by applicable state and local laws, and subject to regulations established by City. The final decision as to whether or not Alcoholic Beverages may be sold at an event, or in any designated area of the Facility, shall be the sole responsibility of City. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of Concessionaire.

12.02 All licenses and permits required for the sale of Alcoholic Beverages at the Facility shall be held by Concessionaire. Neither Party shall take any action which would impair Concessionaire's ability to hold the permits. Concessionaire shall prepare and process all applications for renewals of the permits. Concessionaire shall file all applications for permits and licenses.

12.03 Concessionaire will obtain and keep in force one (1) mixed beverage license for the entire Facility, as well as permits and bonds for all areas of the Facility and exterior when necessary.

ARTICLE XIII. SANITATION

13.01 Concessionaire must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain all assigned service areas of the Facility, including, but not limited to, kitchens, restaurants, Suites, concessions stands, buffets, pantries, vending areas (if applicable), condiment stands, storage and prep areas, in a clean, sanitary, and orderly fashion, including the space within a 25 foot radius of each area. If service areas are assigned for specific trade shows, conventions or public events on a temporary basis, Concessionaire's maintenance responsibility shall be expanded to include all service and seating within those temporarily assigned service areas.

13.02 Concessionaire is responsible for the cost to clean and maintain the vent hoods, exhaust and fire suppression systems (i.e. "Ansul"), grease traps etc. in all assigned service areas. Concessionaire shall provide City, upon request, with copies of maintenance and repair records.

13.03 Concessionaire must provide pest control at food service locations by a City-approved vendor, with program and intervals as required by City, at Concessionaire's cost.

ARTICLE XIV. UTILITIES

14.01 City shall provide all utilities for Concessionaire except telephone and data services.

14.02 Telephone and data service for all of Concessionaire's operations shall be at Concessionaire's cost. Such cost shall be invoiced by City to Concessionaire separately on a regular basis and shall be payable per the terms of the invoice.

14.03 Concessionaire is required to dispose of trash, recyclables, compostables, etc. (as applicable) in their own designated dumpsters in the Facility's loading dock area, and those dumpsters must be contracted through City's approved vendor at Concessionaire's cost. City, in coordination with the Concessionaire, shall be responsible for the recyclable dumpster and disposal of product from the recyclable dumpster. Concessionaire will be responsible for transporting their trash, recyclables and garbage from all assigned service areas to the designated dumpsters or recycling areas in the Facility. City will designate locations where Concessionaire will deposit their trash and recyclables.

14.04 City shall not be liable or responsible for any failure to furnish the services set forth in Section 14.01, if such failure is caused or brought about in any manner by: strike; act of God; other work stoppage; federal, state, or local government action; the breakdown or failure of apparatus, Equipment, or machinery employed in its supply of said services; any temporary stoppage for the repair, improvement, or enlargement thereof, or; any act or condition beyond its reasonable control. Further, City shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.

14.05 City shall not be responsible for any goods, merchandise or Equipment stored at the Facility, nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.

ARTICLE XV. MENUS/PORTIONS/PRICING

15.01 Concessionaire shall provide a variety of high quality and nutritious food. The following parameters shall be observed by Concessionaire in regard to the menus developed for the Facility:

(a) Develop innovative menus which emphasize variety, nutrition, quality, and use fresh foods and seasonal foods whenever possible.

(b) Utilize creative food displays and merchandising techniques to ensure customer satisfaction.

(c) Provide healthful menu choices that include and identify foods that are low in calories, sodium, fats and other information that would satisfy special needs customers.

(d) Be able to produce the menu using the appropriate staffing plans with the Equipment available in the Facility.

15.02 Concessionaire will submit to City's Director for approval proposed menus, portions, brands and pricing of all items, including Concessionaire's Service Charge(s), available for sale in the Facility. Concessionaire shall ensure its prices are competitive with similar facilities. The menu submittal must include comparable venue pricing from all local venues and other venues as requested by City. The comparable venues will be approved in advance by the City's Director.

15.03 Menu and price adjustments are to be submitted to the City's Director for their approval.

15.04 With respect to any Major Event subject to a bonus commission under Section 4.02(d), Concessionaire and City shall review pricing to ensure that it is competitive with similar facilities and events.

ARTICLE XVI. FIRE AND OTHER EMERGENCIES

16.01 Concessionaire shall immediately notify the proper authorities in the event of fire or other emergency. Concessionaire shall immediately notify City's Director in the event of fire or other emergency by calling the emergency telephone number supplied by City. Concessionaire shall ensure that all Concessionaire employees are trained to respond to fire, civil defense, bomb threats, evacuations and other emergencies, based, in part, on any operating procedures provided by City.

16.02 Concessionaire shall give City prompt notice followed by formal written notice of any fire damage occurring to the Facility, and a copy of all notices received by Concessionaire of any claim for bodily injury occurring at the Facility.

ARTICLE XVII. SECURITY

17.01 Concessionaire shall comply with City's security policies. Said policies shall require all of Concessionaire's employees to comply with all instructions, regulations, rules and codes of conduct, as specified by City's Director, which will be provided on an ongoing basis. Concessionaire shall require all such employees to utilize approved entrances and exits designated by City's Director. Concessionaire shall furnish City's Director with a list of Concessionaire's employees and update said list as changes occur.

17.02 Concessionaire shall issue identification badges for security purposes and require all Concessionaire employees and Subcontractors to display said badges at all times. Concessionaire's logo may appear on the issued identification badges. Concessionaire shall recover all inactive identification badges from Concessionaire employees and Subcontractors. Concessionaire shall notify City of any and all Concessionaire's employees no longer working at the Facility. All part-time and temporary staff used at any time by Concessionaire shall be visibly identifiable at all times by badge, uniform, ribbon, pin, or other identifying symbol acceptable to City's Director.

17.03 Concessionaire shall be responsible for turning off all appropriate Equipment and lights, and locking all appropriate doors at the close of Food Service operations within the assigned service areas.

ARTICLE XVIII. OPERATING REQUIREMENTS

18.01 No off-site services or subcontracting are permitted from the Facility, unless approved by City Director. To the extent, however, that Concessionaire can book additional Catering functions for the Facility, and produce additional revenue for Concessionaire and City, without adversely affecting service to Licensees of the Facility, such activities would be favorably viewed by City. All off-site services are subject to the compensation payable to the City in Article IV, regardless of where the event is held.

18.02 As requested by City, Concessionaire will provide City with a written marketing program by September 1 of each year. Concessionaire will closely coordinate marketing efforts with the Facility's booking and services staff.

18.03 Concessionaire shall not interfere with the free distribution of food or drinks, or any other items of any nature whatsoever, where such distribution has been authorized by City. Free samples of any products of any size, whether competing or not, may be given away to patrons. Free samples of products less than 4 ounces may be given away by, on behalf of, or with the permission of, any Licensee, person or organization, at any event at the discretion of City. Cleaning associated with the distribution of any of these items shall be the sole responsibility of City.

18.04 In the event City shall seek to bring a major political convention, NCAA tournament, or other similar national or international events; with City Director's approval, Concessionaire shall make such modifications to the Agreement that are required for City to obtain any such event.

18.05 The City may sell advertising and sponsorship packages for the Facility. Therefore, City reserves the final right of approval of Concessionaire's sources of product supply in connection with City granting exclusive rights to a company. This is limited to food and beverage products. Concessionaire, however, will not be required to purchase from suppliers, whose level of quality, service, and/or prices are not competitive with the marketplace. Concessionaire retains no advertising rights in this Agreement.

18.06 As part of Concessionaire's Capital Investment in Section 33.01, which is attached and incorporated into this Agreement, Concessionaire shall provide, install and use a computerized POS system at a minimum of 400 point-of-sale locations, permanent and portable, and for all Catering billing. The POS locations must accept cash, credit and debit cards, and other forms of electronic payment, such as value-added tickets and mobile and digital wallet payments, such as Apple Pay, loaded ticket, and RFID acceptance. The system must have a POS to patron ratio not to exceed 1:140 and manage all facets of the food service operation, including detailed reporting for the City on all transactional data, while ensuring data security, PCI compliance, and transaction speed. This includes providing for in-seat ordering and service, and technological efficiencies for reducing concession stand wait times and improving customer satisfaction through mobile apps, text alerts and social media, offering ordering, pickup, delivery, coupons and offers, etc.

18.07 As part of Concessionaire's Capital Investment in Section 33.01, Concessionaire shall provide and maintain uniforms for all full-time and part-time staff, temporary staff, and not-for-profit group labor.

18.08 Concessionaire shall at all times comply with all applicable laws, rules, regulations and orders of the federal, state and local government, and also shall abide by all Facility rules, regulations and directives prescribed by City.

18.09 Nothing herein contained shall be held to limit or qualify the right of City to a free and unobstructed use, occupation and control of the Facility, and ingress and egress for itself, its Licensees, and the public.

18.10 Representatives of City shall have the right to enter upon and have access to all assigned Food Service and Merchandise Sales areas during the time events are in operation and all times when Concessionaire employees are present, as provided for in Section 8.01.

18.11 Concessonaire will provide written menus approved by City, utilizing the Facility's logo, used exclusively for the Facility, in sufficient quantities for use by City's and Concessionaire's marketing staffs.

18.12 Concessionaire will provide website menus and ordering capability for all menus and services, and will integrate their website into City's website, if possible.

18.13 City will set rooms, restaurants, and club areas with sufficient tables and chairs for each Catering function. Concessionaire must provide and set linen, skirting and place settings on a timely basis, as well as removing same immediately following each event.

18.14 Concessionaire shall set up Equipment and Smallwares for all Food Service events. Concessionaire shall be responsible for setting up and dismantling all portable Equipment, including any tables for Food Service events.

18.15 The areas of all Food Service and Merchandise Sales, whether temporary, portable or permanent shall be assigned by City. Concessionaire shall acquire no right to any location once assigned, and City reserves the right to require Concessionaire to move such operations and Equipment to facilitate the needs of events.

18.16 Concessionaire will be required to comply with all of City's current and future sustainability rules, regulations, laws, programs and requirements. This includes recycling, donation of excess foodstuffs, composting, using utilities efficiently, using recycled materials, and using LEED-certified or "green" Equipment, methods and applications.

18.17 City encourages Concessionaire to phase-in a food waste reduction program by preferably reducing or donating wasted food. If preferred, City can provide space accommodations at the Facility for Concessionaire's recycling receptacles and Equipment to compost wasted food. City will set an annual waste diversion goal and Concessionaire shall submit an annual report to City on Concessionaire's progress.

18.18 The use of table coverings other than cloth must be approved in advance by City.

18.19 No tip jars will be allowed in the Facility.

ARTICLE XIX. GENERAL FINANCIAL TERMS

19.01 Concessionaire will provide all working capital and inventory necessary to effectively manage the Food Service operations.

19.02 Concessionaire will prepare a sales and commission statement, in a format directed by City, for each Accounting Period, and submit same with the commission payment, no later than 15 days following the close of the preceding Accounting Period.

19.03 Concessionaire shall provide an annual marketing fund of $100,000, in-kind or cash, which shall include without limitation, all food and beverages at direct cost of service labor and product to City, for their marketing functions of the Facility, as directed by City's Director. Any costs in excess of the $100,000 will be billed to City at cost, and which sales are <u>excluded</u> from Gross Receipts.

19.04 For City-sponsored events (other than CSF covered in Section 19.03), Concessionaire will provide a 15% discount on all Food Service. These sales, less the discount, are <u>included</u> in Gross Receipts.

ARTICLE XX. RECORD KEEPING AND ACCOUNTABILITY

20.01 Concessionaire shall maintain all accounting records for the Facility in a format approved by the City. The accounting records shall be available for audit by City at any time throughout the term of the Agreement, and for four years following the termination of this Agreement.

20.02 Concessionaire shall use common financial and accounting software for all financial and accounting transactions under this Agreement, including but not limited to all Food Service

proposals, contracts and invoices. This software will integrate with City's SAP accounting software, if feasible, at Concessionaire's cost.

20.03 In cooperation with City's Director, Concessionaire will prepare an annual financial forecast, in MS Excel format, as directed by City. Forecast information will include 12 months of projections by commission type. Forecast is to be provided by event, where applicable. Five-year forecast information is to be provided to City up to twice per year, upon request by City.

20.04 As requested by City within the timeframe by City, Concessionaire shall provide City with a preliminary daily sales report following each event day's sales. Concessionaire shall provide to City, in an MS Excel format directed by City, a summary of each event, indicating as applicable, menu items, portion sizes, pricing, guarantees, sales by location, total inventory sales, total register sales, and cash overages and shortages. Concessionaire shall attach the corresponding deposit ticket and credit card transmission reports to all daily sales reports.

20.05 Concessionaire shall maintain a separate commercial account in the city of San Antonio for all sales deposits.

20.06 Automatic Teller Machines (ATM) may be placed in the Facility at the discretion of City.

20.07 Concessionaire shall maintain all sales tax licenses and operating permits necessary for the operations.

20.08 Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities, and shall pay any and all applicable taxes relating to their operations, employees, Equipment, inventory or permits.

ARTICLE XXI. DELINQUENT TAXES

21.01 In the event that Concessionaire is or subsequently becomes delinquent in the payment of taxes owed to the City of San Antonio, City reserves the right to deduct any delinquent taxes from payments that City may owe to the delinquent Concessionaire as a result of this Agreement.

ARTICLE XXII. PERFORMANCE BOND

22.01 Concessionaire shall provide a performance bond made payable to the City of San Antonio, executed by a corporate surety acceptable to City who is licensed pursuant to the Texas Insurance Code and listed on the United States Department of the Treasury's Listing of Approved Sureties (Dept. Circular 570) in the amount of $100,000. Said bond must be in a form acceptable to City. Said bond shall further provide that the surety shall indemnify the obligee for all damages or losses resulting from the principal's default. Said bond shall further guarantee the principal's performance of all terms and obligations under this Agreement. Said performance bond must have attached thereto a Power of Attorney as evidence of the authority of the person executing the bond to bind the surety. The performance bond must clearly and prominently display on the bond or on an attachment to the bond: (1) the name, mailing address, physical address, and telephone number, including the area code, of the surety company to which any notice of claim should be sent; or (2) the toll-free telephone number maintained by the Texas Department of Insurance pursuant to §521.051, Texas Insurance Code, and a statement that the address of the surety company to which any notice of claim should be sent may be obtained from the Texas Department of Insurance by calling the toll-free telephone number. This bond must be executed and delivered to City prior to commencement of work under this Agreement. This performance bond is to be renewable on each anniversary date of this Agreement or extension hereto. The performance bond is subject to annual review by City and the amount of the bond may be increased at the sole discretion of City as it deems necessary.

ARTICLE XXIII. OWNERSHIP OF DOCUMENTS

23.01 Pursuant to Texas Local Government Code Chapter 201, any and all Records produced by Concessionaire pursuant to the provisions of this Agreement are the exclusive property of City; and no such Record shall be the subject of any copyright or proprietary claim by Concessionaire. The term "Record" as used herein shall mean any document, paper, letter, book, map, photograph, sound or video recording, microfilm, magnetic tape, electronic medium, or other information recording medium, regardless of physical form or characteristic.

23.02 Concessionaire understands and acknowledges that as the exclusive owner of any and all such Records, City has the right to use all such Records as City desires, without restriction.

ARTICLE XXIV. RECORDS RETENTION

24.01 Concessionaire and its Subcontractors, if any, shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder ("Documents"), and shall make such Documents available to City at their respective offices, at all reasonable times and as often as City may deem necessary during the contract period, including any extension or renewal hereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by City and any of its authorized representatives.

24.02 Concessionaire shall retain any and all Documents produced as a result of services provided hereunder for a period of four years ("Retention Period") from the date of termination of this Agreement. If, at the end of the Retention Period, there is litigation or other questions arising from, involving or concerning these Documents or the services provided hereunder, Concessionaire shall retain the records until the resolution of such litigation or other such questions. Concessionaire acknowledges and agrees that City shall have access to any and all such Documents at any and all times, as deemed necessary by City, during said Retention Period. City may, at its election, require Concessionaire to return the documents to City at Concessionaire's expense prior to or at the conclusion of the Retention Period. In such event, Concessionaire may retain a copy of the documents.

24.03 Concessionaire shall notify City, immediately, in the event Concessionaire receives any requests for information from a third party, which pertain to the Documents referenced herein. Concessionaire understands and agrees that City will process and handle all such requests.

24.04 Should City discover errors in internal controls or in record keeping associated with the scope of work covered by this Agreement, Concessionaire shall correct such discrepancies either upon discovery or within a reasonable period of time, not to exceed 60 days after discovery and notification by City to Concessionaire of such discrepancies. Concessionaire shall inform City in writing of the action taken to correct such audit discrepancies.

ARTICLE XXV. AUDITS

25.01 Concessionaire shall provide to City all reports relating to the performance of services under this Agreement requested by City including, but not limited to, reviewed financial statements and reports, reports and accounting of services rendered, and any such reports or related documents requested by City. Concessionaire shall provide financial and service reports in a reasonable time frame as determined by City. Concessionaire shall also provide any other reports or documents to City within five business days after Concessionaire receives City's written requests, unless the parties agree in writing on a longer period of time. Documents relating to (i) the performance of services under this Agreement or (ii) testing of Gross Revenue calculations shall be retained by Concessionaire for a period of four years after the termination of the Initial Term of this Agreement and any applicable Option Term, in order to be available for audit by City or its designee.

25.02 City may require Concessionaire to submit reports in a format that is reasonably requested by the City and/or City's designated internal auditor. Concessionaire may seek approval of the City's Director by proposing a format in which information shall be provided to City.

25.03 Following notice to Concessionaire by City and during regular business hours at Concessionaire's on-site office, City reserves the right to conduct examinations of the books and records related to the Agreement with City (including such items as contracts, paper, correspondence, copy, books, accounts, billings and other information related to the performance of Concessionaire's services hereunder), but not including individual salary or non-billable expenses. City also reserves the right to perform any and all additional audits relating to Concessionaire's services, provided that such audits are related to those services performed by the Concessionaire for City. These examinations shall be conducted at the offices maintained by Concessionaire, if Concessionaire maintains an office in Bexar, County Texas; however, if Concessionaire does not maintain an office in Bexar County, then Concessionaire shall be responsible for delivering all such books and records related to this Agreement to City, or a place reasonably identified by City's Director.

25.04 City's Audit: City or its authorized representative shall at all reasonable times without prior notice have the right to examine, inspect, and audit all books, papers, and bank records of Concessionaire as necessary to determine the accuracy of reports relative to the Gross Receipts of Concessionaire's operations under this Agreement. The cost and expenses incurred by City incident thereto shall be the sole responsibility of and borne by City. Such records shall without limitation include the records of all daily receipts and deposits, and all books, accounts, memoranda, and all or any other documents of Concessionaire and/or any Subcontractors performing under this Agreement indicating and substantiating the amount of any expenditures and receipts related to this Agreement, including all deposit slips, bills, vouchers, payroll records, purchase orders, and other pertinent records that, under recognized accounting and industry practices, contain information bearing upon or relating to cost, income, gross sales, or subsidy. Such records shall be maintained by Concessionaire for a period of four years after the termination of the Initial Term of this Agreement and any applicable Option Term and shall be made available for inspection and/or audit by City or its agents at the Facility or at Concessionaire's facility. If such audit reveals an error in the calculation of the payments made by Concessionaire to City under this Agreement, Concessionaire shall pay City the amount due within 15 business days of Concessionaire's receipt of such report together with interest at the rate of 18% per annum on commissions due on unreported Gross Receipts (but in no event greater than the maximum legal rate allowed under applicable law) from the date payment should have been made until payment is received by City and the cost of the audit.

25.05 Concessionaire's Audit: An audit to review revenue, commissions paid to the City, sales taxes and other like items by an independent auditing firm approved by City must be submitted no later than 90 days after the end of each Agreement Year at Concessionaire's cost. A copy of all Audit Reports and Management Letters prepared as a result of such audit shall be provided to City. If such audit reveals an error in the calculation of the payments made by Concessionaire to City under this Agreement, Concessionaire shall pay City the amount due within 15 business days of Concessionaire's receipt of such report together with interest at the rate of 18% per annum on commissions due on unreported Gross Receipts (but in no event greater than the maximum legal rate allowed under applicable law) from the date payment should have been made until payment is received by City. If the auditor's report indicates a refund is due Concessionaire, Concessionaire shall notify City in writing within 30 days. City shall pay Concessionaire the amount due within 30 days of City's receipt of such notice, but it is expressly agreed that City shall pay no interest on such refund.

25.06 Any changes to audit intervals and record retention will be determined by City in its sole discretion.

25.07 Concessionaire shall take all precautions to ensure that all cash income received from any source and non-cash vouchers are immediately recorded and that designated reports are submitted as required under this Agreement. Concessionaire shall ensure that all expenditures are

supported by appropriate vendor invoices. Concessionaire shall pay all proper bills and other expenses (other than those paid for by City) incurred in the normal course of providing services at the Facility.

25.08 Concessionaire shall also be subject to periodic, unannounced operating audits of the assigned service areas by City. Such audits may include, but not be limited to, a comprehensive review of:

(a) Service quality, attentiveness, courteousness, etc.
(b) Food quality, presentation, and merchandising
(c) Sanitation practices and conditions, and Equipment maintenance
(d) Personnel appearance
(e) Training program techniques, schedules, and records
(f) Safety conditions
(g) Operational performance from a financial perspective
(h) Recordkeeping and accountability
(i) Insurance requirements
(j) SBEDA fulfillment
(k) Other related operational requirements, conditions and/or practices

25.09 After the completion of such operating audit, Concessionaire shall be notified by the City's Director of conditions needing correction or improvement. Concessionaire shall promptly comply with any such notice.

ARTICLE XXVI. ADVERTISING AND GRAPHICS

26.01 Concessionaire shall not display any identifying logos and/or graphics within the Food Service or Merchandise Areas except (a) as may be on its employee identification badges or uniforms, or (b) as may be utilized in connection with the concession stands, carts, or kiosks, or (c) as may be affixed to Equipment, Smallwares or other products identifying the manufacturer of the product used by Concessionaire, or (d) as may be requested by a Licensee. Signs and other graphic materials that are used by Concessionaire must be approved in advance by City's Director. Concessionaire shall not place signage printed with commercial brand name identification at the Facility, or use such signage when providing services to patrons of the Facility or Licensees, except as otherwise provided in this Section.

26.02 Any use of logos and/or graphics of companies other than Concessionaire in connection with the performance of this Agreement, not in compliance with Section 26.01, is strictly prohibited.

ARTICLE XXVII. LABOR RELATIONS

27.01 Concessionaire shall be responsible for their own labor relations with any trade or union represented among Concessionaire's Employees and shall negotiate and be responsible for adjusting all disputes described above between itself and Concessionaire's Personnel, Concessionaire's Employees, or any union representing such employees. **Concessionaire shall ensure that in any agreement that Concessionaire has with any of its Subcontractors that there be a similar provision whereby the Subcontractors will INDEMNIFY and HOLD CITY HARMLESS for any damages or losses including attorney's fees resulting from labor relation disputes.**

ARTICLE XXVIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

28.01 City has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to City. The SBEDA Ordinance Compliance Provisions contained in this Article of the Agreement are governed by the terms of this Ordinance, as well as by the

terms of the SBEDA Ordinance Policy & Procedure Manual established by City pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this Article of the Agreement shall be subject to the same expanded definitions and meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

28.02 Definitions

(a) **Affirmative Procurement Initiatives (API)** – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

(b) **Certification or "Certified"** – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

(c) **Centralized Vendor Registration System (CVR)** – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

(d) **Commercially Useful Function** – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through

which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by Concessionaire to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the City as fraudulent if Concessionaire attempts to obtain credit for such S/M/WBE participation towards the satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, Concessionaire shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and Concessionaire and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

(e) **Evaluation Preference** – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime Contractors or Respondents.

(f) **Good Faith Efforts** – documentation of Concessionaire's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting Concessionaire's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for this Agreement; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by Concessionaire; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of Concessionaire's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

(g) **HUBZone Firm** – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

(h) **Independently Owned and Operated** – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

(i) **Individual** – an adult person that is of legal majority age.

(j) **Industry Categories** – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

(k) **Joint Venture** – a collaboration of for-profit business entities, in response to a solicitation, which is manifested by a written agreement between two or more independently owned and controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and also shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture.

(l) **Minority/Women Business Enterprise (M/WBE)** – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

(m) **M/WBE Directory** – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

(n) **Minority Business Enterprise (MBE)** – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by City. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

(o) **Minority Group Members** – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

(i) African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

(ii) Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

(iii) Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

(iv) Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

(p) **Originating Department** – City department or authorized representative of City which issues solicitations or for which a solicitation is issued.

(q) **Payment** – dollars actually paid to Concessionaire and/or Subcontractors and vendors for City contracted goods and/or services.

(r) **Points** – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

(s) **Prime Contractor** – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this Agreement, this term refers to Concessionaire.

(t) **Relevant Marketplace** – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

(u) **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by City. For purposes of this Agreement, Concessionaire is the Respondent.

(v) **Responsible** – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

(w) **Responsive** – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

(x) **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which City's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

(y) **SBE Directory** - a listing of small businesses that have been certified for participation in City's SBE Program APIs.

(z) **Significant Business Presence** – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

(aa) **Small Business Enterprise (SBE)** – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

(bb) **Small Business Office (SBO)** – the office within the Economic Development Department (EDD) of City that is primarily responsible for general oversight and administration of the S/M/WBE Program.

(cc) **Small Business Office Manager** – the Assistant Director of the EDD of City that is responsible for the management of the SBO and ultimately responsible for oversight, tracking, monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

(dd) **Small Minority Women Business Enterprise Program (S/M/WBE Program)** – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

(ee) **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor or Contractor in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between Concessionaire and its Subcontractors shall be submitted to City prior to execution of this Agreement and any contract modification agreement.

(ff) **Suspension** – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in City's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of Concessionaires's and/or S/M/WBE firm's performance and payment under City contracts due to City's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

(gg) **Subcontractor/Supplier Utilization Plan** – a binding part of this Agreement which states Concessionaire's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this Agreement, and states the name, scope of work, and dollar value of work to be performed by each of Concessionaire's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this Agreement, specifying the S/M/WBE

Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this Agreement to be approved by the EDD Director or designee.

(hh) **Women Business Enterprises (WBEs)** - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

28.03 <u>SBEDA Program Compliance – General Provisions</u>

(a) As Concessionaire acknowledges that the terms of City's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in City's SBEDA Policy & Procedure Manual are in furtherance of City's efforts at economic inclusion and, moreover, that such terms are part of Concessionaire's scope of work as referenced in City's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this Agreement to be material terms. Concessionaire voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this Agreement by City. Without limitation, Concessionaire further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

(i) Concessionaire shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding Concessionaire's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

(ii) Concessionaire shall cooperate fully with any City or SBO investigation (and shall also respond truthfully and promptly to any City or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of Concessionaire or its Subcontractors or suppliers;

(iii) Concessionaire shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

(iv) Concessionaire shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to Concessionaire's Subcontractor / Supplier Utilization Plan for this Agreement, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by Concessionaire to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by Concessionaire of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

(v) Concessionaire shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with City, as well as any transfer or change in its ownership or business structure.

(vi) Concessionaire shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this Agreement, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

(vii) In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a Concessionaire's Subcontractor / Supplier Utilization Plan, Concessionaire shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and Concessionaire and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

(viii) Concessionaire acknowledges that City will not execute this Agreement or issue a Notice to Proceed for this project until Concessionaire and each of its Subcontractors for this project have registered and/or maintained active status in City's Centralized Vendor Registration System, and Concessionaire has represented to City which primary commodity codes each registered Subcontractor will be performing under for this Agreement.

28.04 <u>SBEDA Program Compliance – Affirmative Procurement Initiatives</u>

(a) City has applied the following contract-specific Affirmative Procurement Initiatives to this Agreement. Concessionaire hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

(i) **M/WBE Joint Venture Program.** In accordance with SBEDA Ordinance Section III. D. 6. (c), this Agreement is being issued pursuant to the M/WBE Joint Venture Program. Therefore, the documentation that

Concessionaire submitted with its proposal for this Agreement reflecting the name or names of the M/WBE Joint Venture partner(s) that will participate on the project; the percentage of prime contract dollars and the absolute dollar value of the services that will be provided by each M/WBE Joint Venture partner; and a description of the work that each M/WBE Joint Venture partner shall be responsible for performing under the terms of the Joint Venture agreement with Concessionaire is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, failure of Concessionaire to attain this agreed- upon level of M/WBE Joint Venture participation in performing a Commercially Useful Function under this Agreement shall be a material breach and grounds for termination of this Agreement with City, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization of M/WBE Joint Venture participation, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

(ii) **SBE Subcontracting Program**. In accordance with SBEDA Ordinance Section III. D. 5. (a), this Agreement is being awarded pursuant to the SBE Subcontracting Program. Concessionaire agrees to subcontract at least ***thirteen percent (13%)*** of its prime contract value to certified SBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

(b) **MWBE Subcontracting Program**. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. Concessionaire agrees to subcontract at least ***ten percent (10%)*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA).

(c) The Subcontractor / Supplier Utilization Plan that Concessionaire submitted to City with its response for this Agreement (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this Agreement), and that contains the names of the certified M/WBE Subcontractors to be used by Concessionaire on this Agreement, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE and M/WBE Subcontractor, and documentation including a description of each SBE and M/WBE Subcontractor's scope of work and confirmation of each SBE and M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached as Exhibit D and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of Concessionaire to attain this subcontracting goal for SBE and M/WBE firm participation in the performance of a Commercially Useful Function under the terms of this Agreement shall be a material breach and grounds for termination of this Agreement, and may result in debarment from performing future City contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon SBE and M/WBE subcontracting goals, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

(d) **Subcontracting Diversity**: City strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the SBE subcontracting goal of

13% and M/WBE subcontracting goal of 10% that have been established for this Agreement. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of April 2015, African-American owned firms represent approximately 2.54% of available subcontractors, Hispanic-American firms represent approximately 7.44%, Asian-American firms represent approximately 0.64%, Native American firms represent approximately 0.00%, and Women-owned firms represent approximately 5.28% of available professional services subcontractors.

28.05 Commercial Nondiscrimination Policy Compliance

(a) As a condition of entering into this Agreement, Concessionaire represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, City's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, Concessionaire shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the City's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in City contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Concessionaire's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to City pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. Concessionaire shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to this Agreement.

28.06 Prompt Payment

(a) Upon execution of this Agreement by Concessionaire, Concessionaire shall be required to submit to City accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that Concessionaire's reported subcontract participation is accurate. Concessionaire shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from City. In the event of Concessionaire's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to Concessionaire, and no new City contracts shall be issued to Concessionaire until City's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of this Agreement.

28.07 Violations, Sanctions and Penalties

(a) In addition to the above terms, Concessionaire acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

(i) Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

(ii) Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

(iii) Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

(iv) Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

(v) Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

(b) Any person who violates the provisions of this Section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

(i) Suspension of this Agreement;

(ii) Withholding of funds;

(iii) Rescission of this Agreement based upon a material breach of contract pertaining to S/M/WBE Program compliance;

(iv) Refusal to accept a response or proposal; and

(v) Disqualification of Concessionaire or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

ARTICLE XXIX. NON-DISCRIMINATION

29.01 Non-Discrimination. As a party to this Agreement, Concessionaire understands and agrees to comply with the Non-Discrimination Policy of the City of San Antonio contained in Chapter 2, Article X of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established herein.

ARTICLE XXX. LICENSES AND PERMITS

30.01 Concessionaire and any Subcontractors involved in the operations, shall, at their own expense, procure and keep in force during the term of this Agreement, all permits and licenses required by law to provide services at the Facility, including all licenses and permits required for the sale of Alcoholic Beverages, permanent and temporary food establishment permits, mobile vending permits, and food handling certifications for staff, and provide copies of such permits and licenses to City. Concessionaire shall notify City of all health and sanitation inspections and provide copies of the reports to City.

30.02 It is understood that this Agreement is conditioned upon acquisition and maintenance of valid licenses to sell beer, wine and liquor by Concessionaire and each Subcontractor providing alcoholic beverages in connection with Food Service.

30.03 Nothing contained herein shall be construed as binding City to the issuance of any license or permit needed by Concessionaire or any Subcontractor to enable anyone to provide services hereunder.

30.04 In the event of termination or expiration of this Agreement by either Party, and upon expiration hereof, it is mutually understood and specifically agreed that any and all permits or licenses issued to Concessionaire and Subcontractors by City for operations at the Facility shall be canceled without further notice or hearing.

30.05 In the event of termination or expiration of this Agreement, Concessionaire shall transfer Alcoholic Beverage license to succeeding Concessionaire, without cost, if allowed by law.

ARTICLE XXXI. CERTIFICATIONS

31.01 Concessionaire warrants and certifies that Concessionaire, Subcontractors and any other person designated to provide services hereunder have the requisite training, licenses and/or certifications to provide said services, and meet all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

ARTICLE XXXII. RENOVATIONS AND SPATIAL MODIFICATIONS

32.01 If City determines that major renovations or remodeling are necessary to improve or increase services and/or operations under this Agreement, City will notify Concessionaire regarding such renovations or remodeling plans prior to implementation.

ARTICLE XXXIII. EQUIPMENT

33.01 Concessionaire shall provide and install all of the Capital Investment indicated in Exhibit E Concessionaire's Capital Investment, which is attached and incorporated into this Agreement,, totaling $2,600,000.00, at a minimum, including the POS system, Smallwares, uniforms and commissary/transportation equipment. Subsequent changes, additions, or deletions to the following shall be in writing and approved by both City and Concessionaire. City shall retain ownership of all Capital Investment provided by Concessionaire under this Agreement. Concessionaire is obligated to make the full Capital Investment identified in Exhibit E. Should Concessionaire not make investments totaling $2,600,000.00, then, Concessionaire shall pay the difference to City, either in cash or in-kind, or use the difference for mutually beneficial purposes, including additional or replacement equipment or renovations, as determined solely by City.

33.02 Concessionaire shall maintain par levels of all Equipment, uniforms and Smallwares, including rolling stock, in a good state of repair, including maintenance, replacement or repair necessitated by ordinary wear and tear to satisfy the needs of the Facility. Concessionaire shall provide an initial complement of Smallwares, including rolling stock, of sufficient quantity and quality to

conduct operations in a first-class manner and be responsible for all necessary replacement of such Smallwares. Concessionaire shall provide and maintain a minimum par stock of 500 high-quality place settings and serviceware for the Facility including Bar, Concessions, Suites and Restaurants. Title to such initial complement of Smallwares shall rest solely with City. Upon expiration or termination of this Agreement the initial complement of Equipment and Smallwares shall become the property of City. Concessionaire shall have the option, at City's discretion, of buying at fair market value, some or all Equipment and Smallwares owned by City, which are maintained at the Facility.

33.03 City shall provide, install and permit Concessionaire to use City's Food Service Equipment as specified below. Subsequent changes, additions, or deletions to the following shall be in writing and approved by both City and Concessionaire. If it is determined by Concessionaire that such Equipment is no longer needed for the operations, Concessionaire will notify City, and with City's consent, not to be unreasonably withheld, Concessionaire may direct City to remove such Equipment. City shall retain ownership of all Equipment provided by City and Concessionaire under this Agreement, with the exception of any Concessionaire-owned and leased equipment brought on-site with City's approval or provided by purveyors. As requested by City, Concessionaire shall provide a list to City's Director of all Concessionaire-owned and leased equipment. Concessionaire shall replace Concessionaire-owned and leased equipment as City deems necessary. At intervals required by City, but not less than every two years, and upon termination or expiration of this Agreement, a joint inventory shall be taken by City and Concessionaire of all Equipment, POS, uniforms and Smallwares to determine what replacements and repairs are required. If any item is unaccounted for after such inventory, Concessionaire has 60 days from finalization of the inventory to produce missing Equipment or provide a written plan for replacement.

Item Description	Inventory Count	Item Description	Inventory Count
Cart	6	Ice Bin	37
Cart – Beer	5	Ice Cream Machine	3
Cart – Condiment	11	Ice Machine	23
Cart – Food	2	Kiosk	6
Cart – Hot Dog	4	Mixer	1
Cart – Ice Cream	1	Oven	1
Cart – MV	31	Oven – Convection	10
Cooler	3	Oven – Pizza	16
Cooler – Walk-In	1	Popcorn Machine	2
Display – Heated Food	3	Rack – Bun	23
Display – Refrigerated	1	Rack – Drying	32
Freezer	1	Rack – Dunnage	233
Freezer/Cooler – Reach-In	15	Rack – Fryer Basket	4
Freezer/Cooler – Under Counter	31	Range	1
Freezer/Cooler – Walk-In	34	Refrigerated Box	1
Freezer/Refrigerator	1	Refrigerator	33
Fryer	33	Shelf	161
Fryer Cart	1	Shelf – Over Counter	5
Fryer Holder	2	Shelf – Over Sink	33
Fryer Table	14	Table	262
Fryer Warmer	13	Table – Picnic	8
Griddle	15	Table – Prep	2
Griddle Stand	18	Tilting Skillet	1
Griddle/Oven Combo	2	Vent Hood	26

Grill – Roller	26	Warmer	1
Heater	6	Warmer – Nacho Cheese	35
Hot Box	82	Warmer – Popcorn	36
		Grand Total	**1,358**

33.04 City reserves the exclusive right, privilege and responsibility of installing vending machines at the Facility. City shall receive all commissions resulting from the sale of vending machine items and shall hold all sales rights to said machines. However, City agrees to limit the number and character of installed vending machines to not directly compete with Concessionaire's rights under this Agreement. In no case shall Concessionaire install, rent or otherwise profit from sale of vending machine items without the written consent of City.

33.05 The cost of repairing or replacing Equipment damaged as a result of the acts or omissions of Concessionaire shall be paid by Concessionaire, and if such Equipment is unable to be repaired, Concessionaire will replace such Equipment with Equipment of equal value and quality at Concessionaire's expense and not as part of the 2% Fund provided for under Section 33.08.

33.06 Concessionaire is responsible for all maintenance and service agreements for the Equipment, including Concessionaire's Capital Investment. Equipment, which is supplied in good condition by City, shall be maintained by Concessionaire in the same condition, normal wear and tear excepted, at Concessionaire's expense as a part of the 2% Fund provided for under Section 33.08 ("2% Fund"). Concessionaire shall immediately notify City's Director of any Equipment failure that will adversely affect the operations or result in the spoilage of food, etc. Concessionaire shall send a notice to the City's Director when repairs and/or services are completed. Service agreements for the Equipment will not be paid for from the 2% Fund and shall be at Concessionaire's expense.

33.07 Concessionaire shall not remove any Equipment from the Facility without City's written approval.

33.08 Concessionaire shall establish and maintain a reserve account for Equipment repair and replacement, including Concessionaire's Capital Investment, in an amount equal to 2% of Gross Receipts. All expenditures from the reserve account shall only occur with the prior written approval of City. Any money left in the account at the end of the Agreement will belong to City.

33.09 Concessionaire shall provide all of its office furniture, supplies, computers, etc. required for its offices at the Facility.

33.10 Concessionaire is responsible for maintaining all water softening Equipment and the associated costs of service for the Equipment.

33.11 Concessionaire shall provide all commissary/transportation Equipment and any other Equipment not otherwise provided for that they require to operate the Food Service provided under this Agreement in a first class manner.

33.12 Concessionaire is responsible for maintaining all the items set forth in Sections 33.01 and 33.02 in a good state of repair, including all maintenance, replacement or repair of such items necessary to satisfy the needs of the Facility. Should City determine that the repair or replacement of any such items is necessary, City shall provide notice to Concessionaire and Concessionaire shall replace such items within 30 days of such notice.

ARTICLE XXXIV. FACILITY

34.01 City shall be responsible for the following services with respect to the Facility:

(a) Provide adequate ingress and egress, including reasonable use of the corridors, passageways, and loading platforms.

(b) Make such improvements and/or alterations to the assigned service areas as it may deem necessary in its sole discretion, and Concessionaire's compensation shall be equitably adjusted in the event of a material interference with Concessionaire's performance hereunder as a consequence of such improvements and/or alterations that are not corrected by City within a reasonable period of time.

(c) Maintain and repair the building structures in the assigned service areas, such as the maintenance of water, sewer (except for blockage caused by Concessionaire) and electrical lines, ventilation and air conditioning lines and systems, repair of electrical lighting fixtures, (including re-lamping); heating systems; floor coverings, wall and ceilings. Concessionaire, however, shall bear the expense of repairs resulting from the acts or omissions of Concessionaire, and its vendors, agents and Subcontractors, or as otherwise provided herein.

(d) Provide, at no charge to Concessionaire, such HVAC, electricity, gas, water and sewer service that may be reasonably required for the efficient operation of the Food Service. Concessionaire shall utilize prudent energy management at all times.

(e) Provide sanitary toilet facilities for Concessionaire's employees in Concessionaire's assigned areas.

(f) Provide cleaning services in all areas of the Facility, excluding the assigned service areas.

(g) Provide office space for Concessionaire's Food and Beverage Manager and for administrative activities such as purchasing, invoice reconciliation, storage and payroll.

(h) Provide periodic major repair of floors, carpets, ceilings, walls, windows, light fixtures, draperies, blinds and vents in the assigned service areas.

34.02 City shall maintain sanitary sewer lines; however, Concessionaire shall be responsible for clearing all blockages to sewer lines at the Facility caused by Concessionaire. The cost to repair or replace any such utility service or lines due to Concessionaire's negligence shall be the Concessionaire's expense. City will invoice Concessionaire for repairs at market rates if City makes such repairs. Concessionaire shall be responsible for all floor and grease trap cleaning. Concessionaire shall take all precautionary measures to ensure that grease is not disposed of in sinks and floor drains.

34.03 Concessionaire shall maintain the Facility in good working condition, normal wear and tear excepted. Any damages to the Facility caused by Concessionaire or any employee, agent, invitee or Subcontractor of Concessionaire shall be the sole responsibility of Concessionaire. City may require the use of City or City-contracted maintenance staff for any necessary repairs to the Facility, if it is in City's best interest.

ARTICLE XXXV. CITY'S ACCESS TO AND USE OF FACILITY

35.01 City shall have the right to use all areas of the Facility for non-food service events at any time, unless such spaces have been previously committed for use in connection with Food Service under this Agreement.

ARTICLE XXXVI. TERMINATION

36.01 In the event Concessionaire defaults or fails to observe any of the terms and conditions of this Agreement, City shall have the right to do the following:

(a) Give Concessionaire notice of the default, specifying the corrective action and providing a 30 day time period within which corrective action must be taken to avoid termination of this Agreement by City (if such default cannot be reasonably cured within 30 days, such longer period of time as is reasonably needed to accomplish such corrective action may be requested of City's Director); and

(b) If the Concessionaire has failed to complete such corrective action within the stated time period, and if City intends to terminate this Agreement for cause, then City must give Concessionaire at least 30 day's prior written notice of such intention. Thirty days thereafter, this Agreement and City's obligations and duties hereunder will end, regardless of any corrective action by the Concessionaire.

Termination of this Agreement shall not relieve any Party of any responsibility for losses and damages to the other resulting from a default.

36.02 In the event City defaults or fails to observe any of the terms and conditions of this Agreement, Concessionaire shall have the right to do the following:

(a) Give City notice of the default, specifying the corrective action and providing a 30 day time period within which corrective action must be taken to avoid termination of this Agreement by Concessionaire (if such default cannot be reasonably cured within 30 days, such longer period of time as is reasonably needed to accomplish such corrective action may be requested of Concessionaire); and

(b) If the City has failed to complete such corrective action within the stated time period, and if Concessionaire intends to terminate this Agreement for cause, then Concessionaire must give City at least 30 day's prior written notice of such intention. Thirty days thereafter, this Agreement and Concessionaire's obligations and duties hereunder will end, regardless of any corrective action by the City.

Termination of this Agreement shall not relieve any Party of any responsibility for losses and damages to the other resulting from a default.

36.03 Upon the effective date of termination of this Agreement, Concessionaire shall relinquish occupancy of the assigned service areas to City. Concessionaire shall return all areas of the Facility, Equipment, Smallwares, POS System and items furnished by City and Concessionaire in good working condition.

(a) A joint inventory shall be immediately undertaken to establish the existence and condition of all Equipment, POS, uniforms and Smallwares.

(b) A walk-through of the assigned service areas shall also be taken to inventory its condition at that time.

36.04 If, within 30 days of termination of this Agreement, City determines that any part of the assigned service areas and/or Equipment are damaged by Concessionaire, and that such condition was not evident in the final inventory or walk-through as described in Sections 36.02(a) and 36.02(b), City reserves the right to have Concessionaire pay for repairs to said damaged areas and/or Equipment. This clause shall survive the expiration of this Agreement.

36.05 Concessionaire shall be responsible for all direct losses and damages to City, including but not limited to, the assigned service areas, resulting directly from Concessionaire's default, failure to observe the terms and conditions of this Agreement, or from Concessionaire's negligence.

36.06 At the expiration or termination of this Agreement, for any reason, City will purchase or cause to be purchased Concessionaire's investments hereunder at then book value. Concessionaire will amortize their investment as follows:

(a) Uniforms and Smallwares – 36 months, straight line method
(b) All costs incurred as a part of the Capital Investment described in Section 33.01, excluding those set forth in Section 36.06 (a) – 120 months from the date of deployment
(c) Investment provided to City under Section 4.01 – 180 months, straight line method

36.07 At the termination of Concessionaire's Agreement, Concessionaire will assign all Food Service contracts for events that are scheduled to occur after the effective date of termination, to the succeeding Concessionaire and transfer all deposits held for those functions to the succeeding Concessionaire.

ARTICLE XXXVII. INDEPENDENT CONTRACTOR

37.01 Concessionaire covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of City. City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by Concessionaire under this contract and that Concessionaire has no authority to bind City. The doctrine of *respondeat superior* shall not apply as between City and Concessionaire.

ARTICLE XXXVIII. CONFLICT OF INTEREST

38.01 Concessionaire acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the City or any City agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with City or in the sale to City of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a City officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns 10% or more of the voting stock or shares of the business entity, or 10% or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a City contract, a partner or a parent or subsidiary business entity.

38.02 Pursuant to the Section above, Concessionaire warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of City. Concessionaire further warrants and certifies that is has tendered to City a Contracts Disclosure Statement in compliance with City's Ethics Code.

ARTICLE XXXIX. ASSIGNMENT AND SUBCONTRACTING

39.01 Concessionaire shall supply all qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or Subcontractors of Concessionaire. Concessionaire, its employees or its Subcontractors shall perform all necessary work. All of Concessionaire's Subcontractors are set forth on Exhibit D Concessionaire's Subcontractor/Supplier Utilization Plan. Concessionaire shall submit any changes to Exhibit D as required in Section 28.01 (gg). In no event shall any not-for-profit or community group working at a Concession stand under this Agreement be considered a Subcontractor.

39.02 Concessionaire may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer or any other means, without the prior written consent of City. As a condition of such consent, if such consent is granted, Concessionaire shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Concessionaire, assignee, transferee or subcontractor.

39.03 Any attempt to transfer, pledge or otherwise assign this Agreement without said approval, shall be void *ab initio* and shall confer no rights upon any third person. Should Concessionaire assign, transfer, convey, delegate or otherwise dispose of any part of all or any part of its right, title or interest in this Agreement, City may, at its option, cancel this Agreement and all rights, titles and interest of Concessionaire shall thereupon cease and terminate, in accordance with Article XXXVI Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Concessionaire shall in no event release Concessionaire from any obligation under the terms of this Agreement, nor shall it relieve or release Concessionaire from the payment of any damages to City, which City sustains as a result of such violation.

39.04 Any work or services provided by Concessionaire's Subcontractors shall be subcontracted only by written contract, agreement, purchase order, invoice or the like, and unless specific waiver is granted in writing by City, shall be subject by its terms to the applicable business terms of this Agreement. Compliance by Subcontractors with this Agreement shall be the responsibility of Concessionaire. City shall in no event be obligated to any third party, including any Subcontractor of Concessionaire, for performance of services or payment of fees.

ARTICLE XL. LAW APPLICABLE

40.01 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED HEREUNDER ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.

ARTICLE XLI. VENUE

41.01 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this Agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.

ARTICLE XLII. AMENDMENTS

42.01 Except where the terms of this Agreement expressly provide otherwise, any amendment to this Agreement shall not be binding on the Parties unless such amendment be in writing, executed by both City and Concessionaire and dated subsequent to the date hereof, and subject to City Council approval, if required.

ARTICLE XLIII. SEVERABILITY

43.01 If any clause or provision of this Agreement is held invalid, illegal or unenforceable under present or future federal, state or local laws, including but not limited to the City Charter, City Code, or ordinances of the City of San Antonio, Texas, then and in that event it is the intention of the Parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this Agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties hereto that in lieu of each clause or provision of this Agreement that is invalid, illegal, or unenforceable, there be added as a part of the Agreement a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

ARTICLE XLIV. COMPLIANCE

44.01 Concessionaire shall provide and perform all services under this Agreement in compliance with all applicable federal, state, local laws, rules and regulations, including City permitting requirements.

ARTICLE XLV. ACTS OF GOD

45.01 If the Facility or any portion thereof is destroyed or damaged by fire or other calamity so as to prevent the use of the Facility for the purposes and during the periods specified in this Agreement, or if the use of the Facility by Concessionaire shall be prevented by an act of God, strike lockout, material or labor shortage, restrictions by any governmental authority, civil riot, flood or any other cause beyond the control of City, then, notwithstanding any other remedies available to City under this Agreement, this Agreement shall terminate. City shall not be liable or responsible to Concessionaire for any damages caused thereby and Concessionaire hereby waives any claims against City for damages by reason of such termination.

ARTICLE XLVI. NON-WAIVER OF PERFORMANCE

46.01 Unless otherwise specifically provided for in this Agreement, a waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XLVII. NOTICE

47.01 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or UPS) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either Party may from time to time designate in writing.

<u>If intended for City, to</u>:

City of San Antonio
Attn: Director
Convention and Sports Facilities Department
900 E. Market Street
San Antonio, TX 78205

<u>If intended for Concessionaire, to</u>:

SAVOR Black Tie Joint Venture
Attn: President
300 Conshohocken State Road, Suite 770
West Conshohocken, PA 19428

ARTICLE XLVIII. INTELECTUAL PROPERTY

48.01 Concessionaire agrees to obtain all necessary licenses and take all other necessary steps to insure that all use of trademarked or copyrighted materials used during the term of the Agreement complies with United States and any other applicable trademark and copyright law.

48.02 **Concessionaire agrees to INDEMNIFY, DEFEND and HOLD HARMLESS, at its own expense, City, its officials, agents and employees from any and all liability arising from trademark or copyright infringement and/or consequential damages that others may suffer as a result of the use by Concessionaire or its designee of copyrighted materials during the term of this Agreement.**

ARTICLE XLIX. LEGAL AUTHORITY

49.01 The signer of this Agreement for Concessionaire represents, warrants, assures and guarantees that he has full legal authority to execute this Agreement on behalf of Concessionaire and to bind Concessionaire to all of the terms, conditions, provisions and obligations herein contained.

ARTICLE L. PARTIES BOUND

50.01 This Agreement shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

ARTICLE LI. CAPTIONS

51.01 The captions contained in this Agreement are for convenience of reference only, and in no way limit or enlarge the terms and/or conditions of this Agreement.

ARTICLE LII. EXHIBITS

52.01 The Exhibits listed below are an essential part of the Agreement and it governs the rights and duties of the parties. Any conflict between this Agreement and the Exhibit shall be resolved in favor of this Agreement.

(a) Exhibit A: City's Request for Proposals
(b) Exhibit B: Concessionaire's Articles of Incorporation and Joint Venture Agreement
(c) Exhibit C: Concessionaire's Food Service Implementation Plan
(d) Exhibit D: Concessionaire's Subcontractor/Supplier Utilization Plan
(e) Exhibit E: Concessionaire's Capital Investment

ARTICLE LIII. ENTIRE AGREEMENT

53.01 This Agreement constitutes the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, unless same be in writing, dated subsequent to the date hereof, and be duly executed by the parties, in accordance with Article XLVII Notice.

WITNESS OUR HANDS, EFFECTIVE as of _____ ___, 2016:

Accepted and executed in _____ originals on behalf of the City of San Antonio pursuant to City Ordinance Number 2016-___-___-_____, dated _____, 2016, and Concessionaire.

Signatures on following page

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

Sheryl L. Sculley
City Manager

ATTEST:

Leticia Vacek
City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda
Acting City Attorney

SAVOR Black Tie Joint Venture
by and through its Majority Partner,
SMG Food and Beverage, LLC

John F. Burns
CFO

Exhibit A

City's Request for Proposals

Exhibit B

Concessionaire's Articles of Incorporation and Joint Venture Agreement

Concessionaire's Articles of Incorporation, if applicable, will be attached upon completion.

Exhibit E

Concessionaire's Capital Investment

Area	Description	Amount
Catering	Leasehold Improvements	$ 33,500
	Equipment	$ 25,000
	Smallwares	$ 6,500
	Subtotal Catering	**$ 65,000**
Commissary/Kitchen/Offices	Millwork/Stainless Steel/Counters/Cabinetry	$ 26,400
	Leasehold Improvements	$ 20,000
	Equipment	$ 35,000
	Smallwares	$ 3,650
	Rolling Stock/Portables	$ 3,650
	Subtotal Commissary/Kitchen/Offices	**$ 88,700**
Concessions Vending	Leasehold Improvements	$ 398,000
	Smallwares	$ 98,960
	Portables	$ 273,452
	Subtotal Concessions Vending	**$ 770,412**
Suites	Equipment	$ 7,200
	Smallwares	$ 187,200
	Subtotal Suites	**$ 194,400**
Miscellaneous	POS Systems (min. 400 POS units)	$1,016,543
	Transportation Equipment	$ 15,045
	Uniforms	$ 19,900
	Plaza Shade Structures & Retail Equipment	$ 155,000
	Contingency (Incl. transition costs)	$ 275,000
	Subtotal Miscellaneous	**$1,481,488**
	TOTAL CAPITAL INVESTMENT	**$2,600,000**

	Capital Investment	Amount
1	POS	$1,017,000
2	Urban City	$ 52,000
3	Bulls & Brews	$ 62,000
4	Deep in the Heart	$ 108,000
5	River City	$ 50,000
6	The Peak	$ 155,000
7	Lone Star	$ 60,000
8	The Last Stand	$ 21,000
9	Grid Iron Bar	$ 18,000
10	Wild Leaf	$ 17,000
11	Texas Two Step	$ 10,000
12	All Other/Portables/Smallwares/Transition	$1,030,000
	TOTAL CAPITAL INVESTMENT	**$2,600,000**