RR
05/21/15
Item No. 5

AN ORDINANCE 2015-05-21-0424

AUTHORIZING A CATERING AND CONCESSIONS SERVICES AGREEMENT WITH RK CULINARY GROUP, LLC FOR THE HENRY B. GONZALEZ CONVENTION CENTER FOR A TERM OF 10 YEARS COMMENCING ON OCTIBER 1, 2015; AND AUTHORIZING THE TERMINATION OF THE EXISTING CATERING AND CONCESSIONS SERVICES AGREEMENT EFFECTIVE SEPTEMBER 30, 2015.

* * * * *

WHEREAS, In May 2014, the City solicited proposals from experienced, qualified food service providers interested in providing catering, restaurant, concessions and sundry services on an exclusive basis, as well as non-exclusive ancillary and merchandise services at the Henry B. Gonzalez Convention Center and Lila Cockrell Theater; and

WHEREAS, the solicitation was active for eight months with three pre-submittal conferences held in June, July, and December 2014 to allow for potential respondents to ask questions or seek clarification to the solicitation; and

WHEREAS, three proposals were received by the City, however, one was disqualified from consideration for failing to meet the requirements of the City's SBEDA program which included subcontracting goals established by the City's SBEDA Goal Setting Committee; and

WHEREAS, the two remaining proposals were evaluated by a committee comprised of representatives from the City Manager's Office, Convention & Sports Facilities Department, the Convention and Visitors Bureau, the Convention & Visitors Commission, and a convention center client representative (the "Evaluation Committee"); and

WHEREAS, on April 9th and 10th, 2015, the Evaluation Committee convened to interview and evaluate the qualifications of the respondents based on their experience, background, and ability to provide all food and beverage service on an exclusive basis for events held in the Convention Center; and

WHEREAS, based upon the submitted proposals, the interviews of and presentations by the proposing firms, the Evaluation Committee recommends that the City contract with RK Culinary Group, LLC to provide exclusive catering, restaurant, concessions and sundry services and non-exclusive ancillary and merchandise services at the Henry B. Gonzalez Convention Center and Lila Cockrell Theater; **NOW THEREFORE:**

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

SECTION 1. The terms and conditions of a Catering and Concessions Services Agreement (the "Agreement") with RK Culinary Group LLC, and a Termination Agreement of the current Catering and Concessions Agreement effective September 30, 2015, are hereby approved.

SECTION 2. The City Manager, or her designee, is authorized to execute the new Catering and Concessions Services Agreement in accordance with this Ordinance. Copies of the Agreement in substantially final form are set out as **"Attachment I"** and made a part of this Ordinance. Final copies of the Agreement shall be attached upon execution by the Parties.

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SECTION 3. Funds generated by this ordinance will be deposited as per the table below:

Amount	General Ledger	Internal Order	Fund
$675,000.00	4407731	242000000001	29006000
$4,075,000.00	4407732	242000000001	29006000
Total Amt $ 4,750,000.00			

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 become effective immediately upon its passage by eight (8) affirmative votes and on the tenth (10th) day after its passage on less than eight (8) affirmative votes.

PASSED AND APPROVED this 21st day of May, 2015.

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:	**5 (in consent vote: 5, 6, 7, 8, 9, 13, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26)**
Date:	05/21/2015
Time:	09:57:15 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a Catering and Concessions Services Agreement with RK Culinary Group, LLC for the Henry B. Gonzalez Convention Center for a term of 10 years commencing on October 1, 2015; and authorizing the termination of the existing Catering and Concessions Services Agreement effective September 30, 2015. [Ed Belmares, Assistant City Manager; Michael J. Sawaya, Director, Convention & Sports Facilities]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ivy R. Taylor	Mayor		x				
Roberto C. Trevino	District 1		x				x
Alan Warrick	District 2		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			x	

ATTACHMENT 1

FOOD SERVICE AGREEMENT FOR THE HENRY B. GONZALEZ CONVENTION CENTER

This Food Service Agreement for the Henry B. Gonzalez Convention Center (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. 2015-05-21-_____, dated May 21, 2015, and The RK Culinary Group LLC, by and through its Managing Member, The RK Group, (hereinafter referred to as "Caterer"), 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, the City owns and operates, through its Convention and Sports Facilities Department, the Henry B. Gonzalez Convention Center, which includes the Lila Cockrell Theatre (hereafter "Facility"); and

WHEREAS, the Facility is made available to the public through short-term license agreements for a variety of events, to include conventions, exhibitions and meetings; and

WHEREAS, such events may require catering and concession services and therefore, the City sought, through a Request for Qualifications (RFQ), Exhibit A, to contract for the provision of such services for events held at the Facility; and

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

WHEREAS, the City, through a duly authorized city ordinance, accepted Caterer'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**:

DEFINITIONS

"Accounting Period" shall refer to the Caterer's four or five week or monthly fiscal periods of which there must be twelve within each calendar year.

"Agreement Year" shall refer to the period October 1, 2015, through September 30, 2016, and every October 1st through September 30th for every year thereafter until September 30, 2025, or until the Agreement terminates, whichever is earlier.

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

"Ancillary Services" shall refer to other services customarily provided with Catering 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.

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

"Caterer" shall refer to The RK Culinary Group LLC, a limited liability corporation organized under the laws of the State of Texas. The RK Culinary Group LLC organization is as described in its Articles of Incorporation and Joint Venture Agreement, Exhibit B. No change to Exhibit B may be made without the written consent of City acting by and through the City's Director.

"Catering Sales" shall refer to any pre-arranged food and beverage function of multiple customers, 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.

"City" shall refer to the City of San Antonio, Texas, the owner of the Henry B. Gonzalez Convention Center or its Designee. All correspondence should be addressed to Director, Convention and Sports Facilities, P.O. Box 1809, San Antonio, TX 78296-1809.

"City's Director" shall refer to the Director of the City's Convention and Sports Facilities Department or his designee, as applicable.

"Commission" shall refer to the percentage of Gross Receipts that the Caterer pays the City each Accounting Period.

"Concession Sales" shall refer to 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 considering Catering.

"Employee Cafeteria Services" shall refer to a cafeteria open for all employees and contract staff from mid-morning to mid-afternoon, Monday – Sunday, with pricing at cost.

"Equipment" shall refer to all Food Service furniture and machinery used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product. Equipment shall not be affixed to the building, except by electrical or gas connections.

"Facility" shall refer to the Henry B. Gonzalez Convention Center and grounds, including the Lila Cockrell Theatre, located at 200 E. Market St., San Antonio, TX 78205-2637 in Bexar County, as further described in Exhibit C.

"Food Service" shall refer to the food and beverage sales, service and operations at the Facility, including Alcoholic Beverages, Branded Products, Catering Sales, Concession Sales, Restaurant Sales, Employee Cafeteria Services, and Ancillary Services.

"Gross Receipts" shall refer to the total amount of money and rental charges received or charged by the Caterer or any agent, employee or subcontractor of the Caterer for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding Employee Cafeteria sales, service charges and gratuities, City and CSF sponsored functions, City-approved proceeds retained by subcontractor, and applicable sales taxes and TABC mixed-beverage gross receipts and sales taxes. Neither cash shortages nor uncollected debts may be deducted from Gross Receipts. In case of a discrepancy in determining Gross Receipts for Catering and Concession Sales, it shall be the greater of Inventory, Cash Register readings or actual Cash and Charges received.

"Late Fee" is the charge assessed to any payments due the City from the Caterer after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of 18%. Late Fees are payable by the Caterer.

"Leasehold Improvements" shall refer to all equipment, fixtures, furnishing, finishes and construction affixed to the building, by more than an electrical or gas connection.

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

"Merchandise Sales" shall refer to sales of all non-edible souvenirs, novelties and publications at the Facility, provided by a short-term licensee, promoter or other licensee for a commercial event.

"Restaurant Sales" shall refer to all sales of food and beverages from café areas sold by wait staff to individual customers who eat meals prepared and served at the Facility.

"Smallwares" shall refer to the service ware, utensils, crockery, glassware, dishware and cutlery used in the Food Service operation. Caterer is responsible for having service for 10,000 throughout the Agreement term.

"Sundry Sales" refers to all sales of miscellaneous dry good and toiletry items.

I. TERM

1.1 Unless sooner terminated in accordance with the provisions herein, the Initial Term of this Agreement shall be 10 years and shall commence on October 1, 2015 ("Commencement Date"), and expire on September 30, 2025 ("Expiration Date").

1.2 The City may renew the term of this Agreement for one consecutive five (5) year term ("Renewal Term"), subject to the approval of the City Council indicated by the passage of a City ordinance. The City reserves the right to modify all terms and conditions herein upon renewal, including the License Fee. The Renewal Term may only be exercised by the City in conjunction with the Caterer's renewal payment requirement as stated in Section 3.1 of this Agreement.

II. SCOPE SERVICES

2.1 City hereby grants to Caterer: a) the exclusive right to provide Food Services at the Facility, including non-alcoholic and alcoholic beverage services, employee cafeteria, and non-exclusive services customarily related to catering; b) the non-exclusive Merchandise Sales; and c) exclusive Sundry Sales, including the operation of a storefront and coat check in the lobby of the Facility for the sale of miscellaneous dry goods and personal items, with the exception of those instances where Caterer is unable to perform due to emergency circumstances, inclement weather, or any other circumstances that the City's Director and Caterer mutually agree warrant the City's Director to permit a Licensee(s) of the Facility to provide its own Food Services on the Premises. These exclusive and non-exclusive rights shall be performed in accordance with Caterer's best practices as further described in Exhibit D "Caterer's Food Service Implementation Plan."

2.1.1 Caterer understands that the following events are exempted from the exclusive nature of this Agreement and that the consent of Caterer to allow other persons or companies to provide Food Services at the Facility is not required:

a) Annual Jimenez Thanksgiving Dinner;

b) Annual HEB Feast of Sharing Christmas Dinner;

c) Annual Sweetheart Dance and other community-wide City-sponsored events;

d) Those events in which promoter has exclusivity to sell competing food items such as popcorn, snow-cones and cotton candy;

e) Backstage at the discretion of City upon promoter request (Lila Cockrell Theatre);

f) Additional events at the Director or designee's discretion, including events where unique catering requirements of individual event licensees, such as Kosher, Indian and other Ethnic Foods, cannot be adequately prepared or served by the Caterer; and

g) Items and services that are sold from the onsite UPS Store business center are excluded.

2.1.2 It is agreed that in 2.1.1(a), (b), (c) and (d), Contractor shall not be held responsible for the cleaning of those portions of the Facility that are being operated by a person or company other than Caterer and shall not be liable for any damage or loss that may occur in connection therewith. Furthermore, in 2.1.1(a), (b), (c) and (d), City shall require any food and beverage provider to list Caterer as an additional insured on such food and beverage service provider's general liability insurance policy for only that period of time that said provider(s) use(s) the Facility, and at the same levels of insurance provided for the benefit of the City.

2.1.3 It is hereby agreed by the Parties that in relation to the events identified in 2.1.1(a), (b), (c) and (d), Caterer shall pay no commission to City on Gross Receipts for Food Services that Caterer may provide on a non-exclusive basis, to licensees on the Premises.

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

2.3 Caterer understands that customer service is of utmost importance to City. All services provided under this Agreement shall be performed by Caterer in a manner that supports City's goal to provide superior customer service.

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

2.3.2 Caterer shall constantly endeavor to improve the Food Services with a view toward developing maximum sales and service and to promote the marketing of the Facility to a Licensee(s) of the Facility, potential licensees of the Center and their patrons.

2.3.3 The City's Director shall send a Post-Function Experience Survey to the Licensee(s) of the Facility when appropriate which grades Caterer's performance on a scale of "Excellent" to "Poor." Any report indicating a less than "Good" rating will require Caterer through its General Manager to provide an initial written response to the Licensee(s) of the Facility and the City's Director within two (2) Business Days after receiving the survey to be followed by a more complete response, if requested to do so by the City's Director, within ten (10) Business Days after receiving the survey.

III. COMPENSATION TO CITY

3.1 Caterer shall provide to the City an initial payment of ONE MILLION DOLLARS ($1,000,000.00) for the rights to this Agreement payable as follows: $500,000.00 on or before January 1, 2016, and $500,000.00 on or before June 1, 2016. An additional payment of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) shall be provided by Caterer to City no later than sixty (60) days upon City's exercise of a renewal term in accordance with the terms of this Agreement.

3.2 Additionally, Caterer shall pay to City on a monthly basis no later than the twentieth (20th) calendar day of the month following the preceding month's activity, the following commissions for events to be performed on or after January 1, 2016:

a. For Catering Sales, a commission in the amount of twenty-eight and ½ percent (28.5%); and

b. For Ancillary Services, a commission in the amount of fifteen percent (15%); and

c. For Sundry Sales, a commission in the amount of fifteen percent (15%); and

d. For Restaurant Sales, a commission in the amount of twenty-seven percent (27%); and

e. For Concession Sales, a commission in the amount of thirty-five percent (35%); and

f. For Merchandise Sales, a commission in the amount of fifty-percent (50%).

Commissions for events held between October 1, 2015 and December 31, 2015 shall be in accordance with the Termination Agreement, Exhibit E, executed by City and Caterer.

3.3 It is understood by Caterer that all commissions due to 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). Commissions are to be calculated before taxes and service charges (gratuities).

3.3.1 Commission waivers, if any are given, must be approved in advance and in writing by the City's Director, and a copy of the approval document must be included in Caterers monthly sales report and also kept in Caterer's file.

3.3.2 In the event a waiver is not received and/or approved before an event, and Caterer acts as if such waiver is approved, the City's commission will be due and payable on the next commission submission with ten-percent (10%) interest added to the amount actually due.

3.4 Caterer agrees that it shall not barter, trade, or discount any or all Food Services provided by Caterer under this Article that are commissionable to City, without the prior written approval from the City's Director.

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

3.6 City and Caterer agree that the commission percentages set forth in this Article shall be applicable to all events to be performed on or after January 1, 2016.

3.7 City and Caterer agree that the commission percentages set forth in this Article shall be applicable to any events relocated to the Facility due to inclement weather, commonly referred to as "Rain Events."

3.8 The City's Director may waive commissions for Food Services invoiced to the City (1) for City sponsored events that are held at the Center or (2) if it will facilitate the marketing of the Center.

IV. USE OF FACILY AND EQUIPMENT

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

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

V. FOOD SERVICE IMPLEMENTATION PLAN

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

VI. EMPLOYEES AND PERSONNEL

6.1 Caterer 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.

6.2 Caterer will be required to conduct City-approved background checks on all full and part-time staff and contract 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.

6.3 All Food Service employees are employees of the Caterer and not the City. The Caterer 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 the City. No agent, servant, or employee of the Caterer shall under any circumstances be deemed an agent, servant, or employee of the City.

6.4 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 the City or any other proper agency. Upon request by the City, the Caterer shall immediately remove, from the Facility, any employee deemed unsuitable for any reason by the City. Any employee so removed shall never again be employed at the Facility without the prior written consent of the City.

6.5 Caterer shall not remove the General Managers without the City's approval, such approval not to be unreasonably withheld, unless requested by the City, for a minimum of three years, from the time the General Manager is approved by the City. Notwithstanding the above, Caterer may remove the General

Manager without the City's approval due to his/her unavailability to perform the requirements of the position.

6.6 The City shall approve Caterer's proposed on-site management throughout the Term of the Agreement. Caterer's on-site management shall not have job-related responsibilities at other venues and must have a full-time office at the Facility. If the City requests a replacement for the on-site management or any of the staff, Caterer shall have five days to provide a temporary replacement approved by the City, and 15 days to provide the City with at least three resumes of suitable candidates for such purpose. At no time however, shall Caterer leave the Facility without Management staff suitable to the service required for any scheduled event.

6.7 Caterer must conduct regularly scheduled training sessions throughout the year, for all personnel. At a minimum, the training will consist of customer service; alcohol awareness (i.e. "TIPS"); skills training for each position, including proper banquet service, buffet set up and merchandising and wine service for all Catering personnel; POS training; safety; cash handling; food preparation; and recycling.

6.8 Caterer's employees shall be at all times neatly and cleanly uniformed in City-approved uniforms and must meet grooming guidelines and appearance standards prescribed for such employees.

VII. ASSIGNED AREAS

7.1 City shall provide Caterer access to and control over the Facility throughout the term of this Agreement. City may inspect the Facility whenever, in its sole discretion, it deems appropriate.

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

VIII. INSURANCE

8.1 Prior to the commencement of any work under this Agreement, Caterer 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 "**Catering and Concessions for the Convention Center**" 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 have the agent's signature and phone number, and 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.

8.2 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.

8.3 Caterer's financial integrity is of interest to City; therefore, subject to Caterer's right to maintain reasonable deductibles in such amounts as are approved by City, Caterer shall obtain and maintain in full

force and effect for the duration of this Agreement, and any extension here of, at Caterer'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 $500,000/$500,000/$500,000
3. Broad form 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, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
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
Liquor Legal Liability	$1,000,000 per occurrence

8.4 Caterer agrees that upon direction from City, Caterer shall require, by written contract, that subcontractors providing services identified by City (i.e. janitorial, equipment maintenance, etc.) hereunder obtain the same insurance coverages required of Caterer herein, and provide a certificate of insurance and endorsement that names Caterer and City as additional insureds. This excludes Contractors food service subcontractors (vendors, caterers, etc.). Caterer 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 contract for all purposes.

8.5 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 endorsements thereto and may require the deletion, revision, or modification of particular policy terms, conditions, limitations, or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Caterer shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Caterer shall pay any costs incurred resulting from said changes.

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

8.6 Caterer 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 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 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 City; and

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

8.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, Caterer shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Caterer's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

8.8 In addition to any other remedies City may have upon Caterer'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 Caterer to stop work hereunder, and/ or withhold any payment(s) which become due to Caterer hereunder until Caterer demonstrates compliance with the requirements hereof.

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

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

8.11 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.

8.12 Caterer and any subcontractors are responsible for all damage to their own equipment and/or property.

IX. INDEMNIFICATION

CATERER covenants and agrees to FULLY INDEMNIFY, DEFEND and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the 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 CATERER's activities under this Agreement, including any acts or omissions of CATERER, any agent, officer, director, representative, employee, contractor or subcontractor of CATERER, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the 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 CATERER 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 THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

The provisions of this INDEMNITY 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. CATERER shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or CATERER known to CATERER related to or arising out of CATERER's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at CATERER's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CATERER of any of its obligations under this paragraph.

X. QUALITY OF SERVICES AND PRODUCTS

10.1 Caterer shall conduct all of their operations in a first-class, professional, businesslike, and efficient manner consistent with a premier convention center such as this Facility.

10.2 The City shall have the right to approve what portions are used by the Caterer, and at no time will Caterer offer an exclusive to any supplier without the prior written approval of the City.

10.3 All foods, drinks, beverages, confectionery, refreshments, and the like sold or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the 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 kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time.

10.4 All products kept for sale shall be subject to inspection and approved by the City. Rejected product shall be immediately removed from the Facility and shall not be returned for sale.

10.5 The City requires the Caterer to identify and utilize local products and subcontractors to utilize throughout the Facility, whenever appropriate and available.

10.6 It is the intent of the City to utilize Branded Products whenever it is in the best interest of the City

and its Licensee.

10.7 All Concessions will generally utilize disposable plates, cutlery and cups.

10.8 All Catering will utilize permanent Smallwares, dishes, glassware and place settings.

XI. ALCOHOLIC BEVERAGES

11.1 Alcoholic Beverages are to be offered for sale by the Caterer to the extent permitted by applicable state and local laws, and subject to regulations established by the 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 the City. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of the Caterer.

11.2 All licenses and permits required for the sale of Alcoholic Beverages at the Facility shall be held by the Caterer or one of its Joint Venture partners, its employees or officers. Neither party shall take any action which would impair the Caterer's ability to hold the permits. The Caterer shall prepare and process all applications for renewals of the permits. The Caterer shall file all applications for permits and licenses.

11.3 Caterer will obtain and keep in force a mixed beverage permit for the Facility.

XII. SANITATION AND EQUIPMENT MAINTENANCE

12.1 Caterer must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain all assigned areas of the Facility including, but not limited to, kitchens, concession stands, buffets, pantries, vending areas (if applicable), condiment stands, storage and prep areas in a clean, sanitary, and orderly fashion. If specialty food service areas are set up for trade shows, conventions, or public events, Caterer's maintenance responsibility shall be expanded to take in all service and seating within the specialty food service area.

12.2 Caterer is responsible for the cost to clean and maintain the vent hoods, exhaust, and fire suppression systems (i.e. "Ansul") in all kitchen and food preparation areas. Caterer shall provide its monthly maintenance and repair logs to City.

12.3 Caterer is required to utilize City's pest control vendor, program and intervals, at Caterer's cost for areas assigned to Caterer.

12.4 Caterer 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. The Caterer or the City shall provide, and the Caterer shall maintain and replace, a minimum par stock of 10,000 high-quality place settings and service ware.

12.5 The City may require the use of their in-house maintenance staff for the repairs and maintenance, if it is in the City's best interest.

XIII. UTILITIES

13.1 The City shall pay for the usage of HVAC, electricity, gas, and water service for the Caterer's operation. Caterer will utilize prudent energy management.

13.2 The cost of telephone and data service within Caterer's office shall be borne by Caterer, such provider to be selected by Caterer.

13.3 The Caterer is required to dispose of trash (as applicable) in their own designated containers at the loading dock area, and those receptacles must be contracted through the City's approved vendor at Caterer's cost. The City, in coordination with the Caterer shall be responsible for the recycle bins and disposal of product from the recyclable bin. The Caterer shall be responsible for bringing their trash, recyclables and garbage from all Food Service areas to the designated dumpster or recycling areas in the Facility. The City will designate locations where the Caterer may deposit their trash. The removal of the dumpster and recyclables from the Facility will be paid for by the City.

13.4 The cost to repair or replace any utility service or lines due to Caterer's negligence shall be the Caterer's expense and City will invoice Caterer for repairs at market rate. City's sewer lines shall be self-maintained by the City. Caterer shall take all precautionary measures necessary to ensure that grease is not discharged into the sewers.

13.5 The Caterer is responsible for complying with all recycling rules, regulations and laws of the City and/or appropriate governmental bodies.

13.6 The City shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or 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, the City shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.

13.7 The 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.

XIV. MENUS/PORTIONS/PRICING

14.1 Caterer shall provide a variety of high quality and nutritious food. The following parameters shall be observed by Caterer 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 on the Premises.

14.2 All printed menus must be approved by the City's Director. Additionally, Caterer agrees to provide menus to City for promotional purposes.

14.3 Caterer shall submit for approval the proposed pricing and portion sizes of all items available for sale in the Facility to the City's Director. Caterer shall coordinate with the City's Director to establish and control pricing and portion sizes of all items available for sale on the Premises.

14.3 Caterer shall ensure City that its prices are competitive with similar facilities.

> 14.3.1 An annual pricing study will be conducted on each anniversary date of this Agreement by Caterer with a competitive set of local hotels (at least three), and like competitive convention centers around the country (at least three). The competitive set for the survey will be approved in advance by the City's Director.

14.4 Price adjustments needed for routine negotiations are to be approved with the City's Director and reviewed annually. Caterer may submit a scale of adjustments to the City's Director for prior approval.

XV. FIRE AND OTHER EMERGENCIES

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

15.2 Caterer 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 Caterer of any claim for bodily injury occurring at the Facility.

XVI. SECURITY

16.1 Caterer shall follow City's Security Policy within 30 days of the effective date of this Agreement, or any amendments hereto. Said policy shall require all Caterer's Personnel to comply with all instructions, regulations, rules and codes of conduct, as specified by the City's Director, which will be provided on an ongoing basis. Caterer shall require all such personnel to utilize approved entrances and exits designated by the City's Director. Caterer shall furnish City with a list of the names of Caterer's Employees and provide updates to said list of names to the City's Director monthly as changes occur.

16.2 Caterer shall issue identification badges for security purposes and require all Caterer Employees, Caterer Members, and subcontractors to display said badges at all times. Caterer's logo may appear on the issued identification badges. Caterer shall recover all inactive identification badges from Caterer Employees, Caterer Members, and subcontractors. Caterer shall notify City immediately of any and all Caterer's Members and Caterer's Employees no longer working at the Facility. All part-time and/or event workers used at any time by Caterer shall be identified by badge, uniform, ribbon, pin, or other identifying symbol acceptable to the City's Director.

16.3 Caterer 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 Food Service Areas.

XVII. OPERATING REQUIREMENTS

17.1 No off-site or subcontracted sales are permitted from the Facility unless approved by the City. To the extent, however, that Caterer can book outside catering functions and produce additional net revenue for the City without adversely affecting service to clients of the Facility, such activities would be favorably viewed by City.

17.2 On an annual basis, the Caterer must provide the City with a written Marketing Program. The Caterer needs to coordinate efforts closely with the Facility's booking and services' staff.

17.3 The Caterer 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 the City. Free samples of non-competitive products less than 4 ounces may be given away by, or on behalf of, or with permission of any person or organization which has properly engaged the Facility at trade shows, cooking schools, exhibitions, and conventions at the discretion of the City. Clean-up necessitated due to the free distribution shall be the sole responsibility of City.

17.4 In the event that the City shall seek to bring a major political convention, NCAA tournament or other similar national or international events, Caterer and City agree to work in good-faith to make such modifications to the Agreement that are required for the City to obtain any such event.

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

17.6 The Caterer must keep in force during the entire period of the contract all permits and licenses required, including the Alcoholic Beverage License, by all laws and regulations of the State of Texas, County of Bexar and City of San Antonio.

17.7 Caterer shall collect and promptly disburse all taxes required by federal, state and local authorities, and shall pay any applicable taxes relating to Food Service, operations, Equipment, or inventory owned by Caterer.

17.8 Caterer shall use computerized cash or point-of-sale (POS) registers at all sales locations. This includes portable and permanent concession stands, bars, cafeterias, lounges, and for all Catering billing. The Facility has fiber and Wi-Fi throughout the facility. It is important to the City that the Caterer be state-of-the-art for attendees and patrons throughout the term of the contract. This includes providing dynamic, robust and appealing ordering systems and POS utilizing the latest in wireless, handheld devices and technology while ensuring data security, PCI compliance and transaction speed. All sales locations must accept all major credit and debit cards. This includes providing for in-seat ordering and service in the Lila Cockrell Theatre. This also includes providing for technological efficiencies for reducing concession stand wait times and improving customer satisfaction through mobile apps, text alerts and social media offering ordering and pickup, coupons and offers, etc.

17.9 Caterer shall at all times comply with all applicable laws, rules, regulations and orders of the Federal State and Local Governments, and also shall abide by all rules, regulations and directives prescribed by the City.

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

17.11 Representatives of the City shall have the right to enter upon and have access to all spaces occupied by the Caterer during the time events are in operation and all times when Caterer employees are present, subject to the provisions of Section 7.01.

17.12 Caterer must provide written menus approved by City, utilizing the Facility' logos, used exclusively for the Facility, in sufficient quantities for use by City's and the Caterer's marketing staffs.

17.13 Caterer must provide website menus and ordering capability for all menus and services and must integrate their website into the City's website.

17.14 City will set rooms with sufficient tables and chairs for each Food Service function. Caterer must provide and set linen, skirting and place settings on a timely basis, as well as removing same immediately following each Food Service event.

17.15 The Caterer shall set up Equipment and Smallwares for all Food Service events. Caterer shall be responsible for setting up and tearing down all portable Equipment, including any work tables, if any, supplied by the City.

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

17.17 Caterer will be required to comply with all of City's current and future sustainability 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.

XVIII. GENERAL FINANCIAL TERMS

18.1 The Caterer will provide all working capital and inventory necessary to effectively manage the Food Service operations.

18.2 Caterer will provide new furniture, fixtures and equipment in Caterer's office areas located in the expanded areas of the Facility. Such furniture, fixtures and equipment shall be to City's specifications as further described in Exhibit F. Caterer shall not be required to spend more than $55,000 on such furniture, fixtures and equipment but may do so in its sole discretion.

18.3 The Caterer 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 20 days following the close of the preceding Accounting Period.

18.4 Caterer shall provide an annual marketing fund of $100,000 in kind or cash, at Caterer's option, which shall include without limitation, all food and beverages at cost to the City for their marketing functions of the Center as directed by the City. Any costs in excess of the $100,000 will be billed at cost.

18.5 For the CSF sponsored functions, the Caterer will provide all Catering at Cost, with the exception

of alcohol.

18.6 Caterer shall provide Food Service at a 15% discount for City sponsored events.

XVIX. RECORD KEEPING AND ACCOUNTABILITY

19.1 Caterer shall maintain all accounting records for the Facility in a format approved by the City at the on-site office. The accounting records shall be available for audit by the City at any time throughout the term of the Agreement at the on-site office, and for three years following the term of the Agreement at the Caterer's main office.

19.2 Caterer shall use compatible financial software that integrates with City's SAP accounting software.

19.3 Caterer in cooperation with City's Director shall prepare Financial Forecast reports in Excel format and indicate the confidence level in events as either tentative or definite. Forecast information will include 12 months of projections by commission type. Information is to be listed on a per event basis, where applicable. Five year forecast information is to be provided up to twice a year upon request.

19.4 Caterer shall provide the City with a preliminary sales report by 10 a.m. on the day following each cash event which is open to the public. Caterer shall provide to the City, in a format directed by the City, a written summary of each event within 72 hours of that event, indicating where appropriate, customer pricing, guarantees, sales by location, total inventory sales, total register sales, and cash overages and shortages. Caterer shall attach the corresponding deposit ticket and credit card transmission reports to all daily sales reports.

19.5 Caterer shall maintain a separate commercial account in the City of San Antonio for all sales deposits.

19.6 Caterer must use computerized PCI compliant POS. The City shall have access to all such sales and management reports. The City requires the ability of customers to use credit and debit cards for sales at all sales locations within the Facility.

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

19.8 In the event the City is not satisfied with the statements submitted by the Caterer, as provided for herein, the City shall have the right to make a special audit by auditors selected by the City, of the books and records required to be made and preserved, including all sales and expenses, by the Caterer. If such audit shall show a deficiency in payments by the Caterer for any Accounting Period covered, in excess of 1% of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid promptly by Caterer to the City as a Direct Operating Cost.

19.9 Caterer and the City shall inventory all tagged Equipment, on an annual basis to determine what replacements and repairs are required, and to adjust the depreciation schedule accordingly.

19.10 Caterer shall maintain all sales tax licenses and operating permits necessary for the Food Service.

19.11 Caterer 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.

XX. DELINQUENT TAXES

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

XXI. PERFORMANCE BOND

On or before September 30, 2015, Caterer shall cause to be made, executed and furnished to the City upon the effective date of this Agreement a Performance Bond whose form is acceptable to City in the amount of TWO HUNDRED THOUSAND DOLLARS ($200,000.00) conditioned on the faithful performance of all condition and covenants of this Agreement. The Performance Bond shall be issued by a surety authorized to do business in the State of Texas. The 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 the City and the amount of the bond may be increased at the sole discretion of the City as it deems necessary.

XXII. OWNERSHIP OF DOCUMENTS

22.01 Pursuant to Texas Local Government Code Chapter 201, any and all Records produced by Caterer pursuant to the provisions of this contract are the exclusive property of City; and no such Record shall be the subject of any copyright or proprietary claim by Caterer. 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.

22.02 Caterer 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.

XXIII. RECORDS RETENTION

23.01 Caterer 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 the 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.

23.02 Caterer 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 the contract. 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, Caterer shall retain the records until the resolution of such litigation or other such questions. Caterer 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 Caterer to return the documents to City at Caterer's expense prior to or at the conclusion of the Retention Period. In such event, Caterer may retain a copy of the documents.

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

23.04 City reserves the right to conduct examinations, during regular business hours and following notice to Caterer by City, 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 Caterer's services hereunder), no matter where books and records are located, but not including individual salary or non-billable expenses. City also reserves the right to perform any and all additional audits relating to Caterer's services, provided that such audits are related to those services performed by the Caterer for City. These examinations shall be conducted at the offices maintained by Caterer, if Caterer maintains an office in Bexar, County Texas; however, if Caterer does not maintain an office in Bexar County, then Caterer shall be responsible for delivering all such books and records related to this Agreement to the City, or a place reasonably identified by its Director.

23.05 During the retention period, City may require that any or all of such records and accounts be submitted for audit to City or to a Certified Public Accountant selected by City. City shall use its best business efforts to require any Certified Public Accountant selected by City to sign a non-disclosure agreement provided by Caterer. In the event Caterer fails to furnish City any documentation required hereunder within 10 days following the written request for same, then Caterer shall be in default of this Agreement.

23.06 Should City discover errors in internal controls or in record keeping associated with the scope of work covered by this Agreement, Caterer 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 Caterer of such discrepancies. Caterer shall inform City in writing of the action taken to correct such audit discrepancies.

XXIV. AUDITS

24.1 **Annually,** Caterer shall provide to the City's Director all reports relating to the performance of services under this Agreement requested by City including, but not limited to, Reviewed Financial Statements (FYE June 30th), reports and accounting of services rendered, and any such reports or related documents requested by City. Caterer shall provide financial and service reports in a reasonable time frame as determined by City. Caterer shall also provide any other reports or documents to City within five business days after Caterer 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 27.4 of this Agreement or (ii) testing of Gross Revenue calculations shall be retained by Caterer 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.

> 24.1.1 City may require Caterer to submit reports in a format that is reasonably requested by the City and/or City's designated Auditor. Caterer may seek approval of the City's Director by proposing a format in which information shall be provided to City.

24.2 Periodical audits, described further in 24.2.1 and 24.2.3, may be required during the terms of this Agreement.

> 24.2.1 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 Caterer as necessary to determine the accuracy of reports relative to the

Gross Receipts of Caterer'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 Caterer and/or any of Caterer's Members and subcontractors performing under this Agreement indicating and substantiating the amount of any expenditures and receipts related to 27.4 of this Agreement, including all deposit slips, bills, vouchers, purchase orders, and other pertinent records that, under recognized accounting and industry practices, contain information bearing upon or relating to income, Gross Receipts. Such records shall be maintained by Caterer 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 Caterer's facility.

24.2.2 Report of Agreed Upon Procedures: Caterer agrees to work in conjunction with an independent CPA firm to develop a Report of Agreed upon Procedures to be submitted to City within 60 days of the effective date of this Agreement. The Report of Agreed upon Procedures shall be performed in accordance with Statements on Standards for Attestation Engagements No.'s 10 and 11, or such standards as are effective as of the period of time covered by the report. City must accept the Report of Agreed Upon Procedures within 30 days of receipt. If City deems the Report of Agreed Upon Procedures to be unacceptable, City may consult an independent CPA firm to assist Caterer in revising said Report of Agreed Upon Procedures so that they are acceptable to City. In no case shall the Report of Agreed Upon Procedures be accepted after 120 days after the effective date of this Agreement due to the fault of Caterer.

24.2.3 Caterer's Audit: In lieu of the Report of Agreed Upon Procedures, City may require Caterer, up to a maximum of three times during the initial term of this Agreement, to perform an audit by an independent auditing firm approved by City to review revenue, commissions paid to the City, sales taxes and other like items. The cost of the audits will be shared equally by City and Caterer unless the Auditor finds that the Caterer underpaid the City by more than a 2% variance from what sums were paid to the City by Caterer as previously reported to the City, in which case Caterer will pay for all costs associated with the Audit. 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 Caterer to City under this Agreement, then the auditor's report shall be furnished to both Caterer and City within 30 days of the conclusion of the Audit. If a corrected payment required by the auditor's report is due City, Caterer shall pay City the amount due within 15 business days of Caterer'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 Caterer, Caterer shall notify City in writing and include a copy of the auditor's report within 30 days. City shall pay Caterer the amount due within 30 days of City's receipt of such report but it is expressly agreed that City shall pay no interest on such refund.

24.3 Either Caterer or City may dispute the findings of audits performed under 24.2.1 or 24.2.3 within 30 days of receiving the results of said audit. The Party electing to dispute the audit results shall within 30 days following receipt of the auditor's report submit such additional information as may be required to correct the auditor's report. If upon examination of additional information by the designated auditor:

a) such report reflects that a refund is owed to Caterer, then City shall refund such monies to Caterer within 30 days thereafter; or

b) such report reflects that monies are owed to City by Caterer from unreported Gross Receipts, then Caterer shall pay such monies to City, together with interest at the rate of 18% per annum from the date when said payment should have been made until the date payment is received by City, within 30 days thereafter.

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

24.5 Caterer 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. Caterer shall ensure that all expenditures are supported by appropriate vendor invoices. Caterer shall pay all proper bills and other expenses (other than those paid for by City) incurred in the normal course of providing Food Service at the Facility.

24.6 Caterer shall also be subject to periodic, unannounced operating audits of the Food Service Areas by the City's Director and his/her staff. 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
d) Personnel appearance
e) Training program techniques, schedules, and records
f) Safety conditions
g) Operational performance from a financial perspective
h) Other related operational conditions and/or practices

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

XXV. ADVERTISING AND GRAPHICS

25.1 Caterer shall not display any identifying logos and/or graphics within the Food Service 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, kiosks or other Portable Concessions or (c) as may be affixed to equipment, smallwares or other products identifying the manufacturer of the product used by Caterer or (d) as may be requested by a Licensee. Signs and other graphic materials that are used by Caterer shall be conservative and must be approved in advance by City's Director or his/her designee. Caterer shall not place signage printed with commercial brand name identification at the Facility or use such signage when providing Food Service to Licensees except as otherwise provided in this Section.

25.2 Any use of logos and/or graphics of companies other than Caterer or Caterer's Members in connection with the performance of this Agreement and not allowed by Section 25.1 is strictly prohibited.

XXVI. LABOR RELATIONS

Caterer shall be responsible for their own labor relations with any trade or union represented among Caterer's Employees and shall negotiate and be responsible for adjusting all disputes described above between itself and Caterer's Personnel, Caterer's Employees, or any union representing such employees. Caterer shall ensure that in any agreement that Caterer 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.

XXVII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

27.1 SBEDA Program. The 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 the CITY. The SBEDA Ordinance Compliance Provisions contained in this section 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 the 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 section 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.

27.2 Definitions. In this Article XXVII, the following definitions shall apply:

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.)

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 the SBEDA Ordinance in Section III.E.6 of Exhibit A to the SBEDA Ordinance.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires <u>all</u> prospective Caterers and Subcontractors that are ready, willing and able to sell goods or services to the 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 the 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.

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 CATERER to perform such "pass-through" or "conduit" functions that are <u>not</u> commercially useful shall be viewed by the CITY as fraudulent if CATERER 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, the CATERER 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 the CATERER and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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 the 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 Caterers.

Good Faith Efforts – documentation of the Caterer'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 the Caterer's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; 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 the Caterer; 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 CATERER's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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).]

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.

Individual – an adult person that is of legal majority age.

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."

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

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 the 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).

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:

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.

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

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

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.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CATERERS and/or Subcontractors and vendors for CITY contracted goods and/or services.

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).

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 the CATERER.

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.

Caterer – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CATERER is the Caterer.

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.

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.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the 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).

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

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.

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.

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

Small Business Office Manager – the Assistant Director of the EDD of the 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.

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.

Subcontractor – any vendor or contractor that is providing goods or services to CATERER under this Agreement. A copy of each binding agreement, invoice, purchase order or the like between the CATERER and its subcontractors shall be submitted to the CITY prior to the Term of this Agreement or thereafter.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the 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 CATERER's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CATERER's commitment for the use of Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CATERER's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, 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 Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires approval by the EDD Director or designee.

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 the 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.

27.3 SBEDA Program Compliance – General Provisions. As CATERER acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's current SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CATERER's scope of work as referenced in the 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. CATERER voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CATERER further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

(a) CATERER shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CATERER'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;

(b) CATERER 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 CATERER or its Subcontractors or suppliers;

(c) CATERER 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;

(d) CATERER shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CATERER's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CATERER 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 CATERER 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 written approval by the Originating Department and the SBO.

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

(f) CATERER 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 contract, for a minimum of four years or as

required by state law following the final determination of litigation, whichever is later.

(g) 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 CATERER's Subcontractor / Supplier Utilization Plan, the CATERER 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 the CATERER and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

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

27.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CATERER 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:

(a) M/WBE Joint Venture Program. In accordance with SBEDA Ordinance Section III. D. 6. (c), this Professional Services contract is being issued pursuant to the M/WBE Joint Venture Program. Therefore, the documentation that CATERER submitted with its proposal for this CITY Professional Services contract 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 CATERER 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 CATERER to attain this agreed- upon level of M/WBE Joint Venture participation in performing a Commercially Useful Function under its contract shall be a material breach and grounds for termination of the contract with the 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.

(b) SBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 5. (a), this contract is being awarded pursuant to the SBE Subcontracting Program. CATERER agrees to subcontract at least ***twenty percent (20%)*** of its prime contract value to certified **SBE** firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA)(defined as the "SBE Subcontracting Goal"). The Subcontractor / Supplier Utilization Plan that CATERER submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified SBE Subcontractors to be used by CATERER on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each SBE Subcontractor, and documentation including a description of each SBE Subcontractor's scope of work and confirmation of each SBE

Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CATERER to attain this subcontracting goal for **SBE firm participation** in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, 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 subcontracting goal**, 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; **and**

(c) 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. CATERER agrees to subcontract at least ***fourteen percent (14%)*** 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)(defined as the "M/WBE Subcontracting Goal"). The Subcontractor / Supplier Utilization Plan that CATERER submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CATERER on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CATERER to attain the Subcontracting Goal for **M/WBE firm participation** in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, 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 **M/WBE Subcontracting Goal**, 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: The City of San Antonio 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 20%** and **M/WBE subcontracting goal of 14%** that have been established for this contract. 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 2014**, African-American owned firms represent approximately 2.66% of available subcontractors, Hispanic-American firms represent approximately 8.30%, Asian-American firms represent approximately 0.93%, Native American firms represent approximately 0.09%, and Women-owned firms represent approximately 4.48% of available professional services industry subcontractors.

27.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this Agreement, the CATERER represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CATERER 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. CATERER's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this Agreement. CATERER shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

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

27.9 Violations, Sanctions and Penalties. In addition to the above terms, CATERER acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

(a) 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;

(b) 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;

(c) 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;

(d) 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

(e) 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.

27.10 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:

(a) Suspension of contract;

(b) Withholding of funds;

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

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

(e) Disqualification of CATERER 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).

XXVIII. NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, Caterer understands and agrees to comply with the *Non-Discrimination Policy* of the City of San Antonio as described in City Ordinance 2013-09-05-0577 and 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.

XIX. LICENSES AND PERMITS

29.1 Caterer and any subcontractor involved in the Food Service operations, shall, at its own expense and cost, procure and keep in force during the term of this Agreement, all permits and licenses required by law to conduct Food Service at the Facility, and provide copies of such permits and licenses to City within 10 business days of receipt.

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

29.3 Nothing contained herein shall be construed as binding the City to the issuance of any license or permit needed by Caterer or any subcontractor to enable anyone to provide Food Service hereunder.

29.4 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 by City for Food Service operations at the Facility shall be canceled without further notice or hearing.

XXX. CERTIFICATIONS

Caterer warrants and certifies that Caterer and any other person designated to provide services hereunder has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided herein.

XXXI. CONTRACT ADMINISTRATION

City hereby engages Caterer to operate the Food Service as specified herein. Caterer's GM shall cooperate at the Facility with the City's Director. The City's Director may be changed at the option of City by written notice to Caterer without a formal amendment. All Food Service rendered under this Agreement is subject to the final approval of the City's Director.

XXXII. RENOVATIONS AND SPATIAL MODIFICATIONS

If the City determines that planned major renovations or remodeling are necessary to increase Food and Beverage Service and/or concession opportunities at the Center and/or Lila Cockrell Theater, City will notify Caterer to such renovations or remodeling plans prior to implementing such renovations or remodeling.

XXXIII. EQUIPMENT

33.1 City shall provide, install, and permit Caterer to use the major Food Service Equipment as specified in Exhibit G. If it is determined by Caterer that such equipment is no longer needed for Food Service operations, Caterer will notify City, and with City's consent, not to be unreasonably withheld, Caterer may direct City to remove such equipment. Ownership of all equipment provided by City under this Agreement shall be vested in City with the exception of any equipment provided by Caterer and brought on-site by Caterer with City's approval, for which all costs have been borne by Caterer, with the exception of any equipment leased by City. On or before January 31 of each calendar year, Caterer shall provide a list of all Caterer-owned and leased equipment brought on site to the City's Director.

33.2 Caterer shall provide an initial complement of smallwares of sufficient quantity and quality to conduct Food Service operations in a first-class manner and be responsible for all necessary replacement of such smallwares. Title to such initial complement of smallwares shall rest solely with City.

33.3 Food Service Equipment initially furnished by City is set forth in Exhibit G. Subsequent changes, additions, or deletions to Exhibit G shall be in writing and approved by both City and Caterer. On the annual anniversary date of this Agreement and upon termination or expiration of this Agreement, a joint inventory shall be taken by City and Caterer to verify the correctness of the equipment listed in Exhibit G. If any item is unaccounted for after such inventory, Caterer has 60 days from finalization of the inventory to produce missing equipment or provide a written plan for replacement.

33.4 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 concession rights to said machines. However, City agrees to limit the number and character of installed vending machines so that they do not directly compete with Caterer's rights under this Agreement. In no case shall Caterer install, rent or otherwise profit from sale of vending machine items without the written consent of City.

33.5 The cost of repairing Food Service Equipment damaged as a result of the acts or omissions of Caterer shall be paid by Caterer, and if such equipment is unable to be repaired, Caterer will replace equipment with equipment of equal value and quality at Caterer's expense.

33.6 Caterer is responsible for all maintenance and service agreements for the Food Service Equipment. Equipment which is supplied in good condition by City shall be maintained by Caterer in the same condition, other than normal wear and tear, at Caterer's expense. Caterer shall immediately notify the City's Director of any equipment failure that will adversely affect the Food Service operations or

result in the spoilage of food, etc. Caterer shall send a follow-up notice to the City's Director when repairs and/or services are completed.

33.6.1 Caterer shall not be required to repair or replace "obsolete equipment." "Obsolete equipment" is defined as equipment whose repair cost exceeds 85% of its fair market value as determined by Caterer and approved by City. City and Caterer may agree for Caterer to replace the Equipment and be reimbursed by City.

33.7 Caterer shall not remove any Food Service equipment from the Facility without City's written approval.

XXXIV. FACILITY

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

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

b) Make such improvements and/or alterations to the Food Service Areas as it may deem necessary in its sole discretion.

c) Maintain and repair the building structures in the Food Service Areas, such as the maintenance of water, sewer (except for blockage caused by the Caterer) 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. Caterer, however, shall bear the expense of repairs resulting from the acts or omissions of Caterer, vendors, agents, subcontractor's or as otherwise provided herein.

d) Provide, at no charge to Caterer, such heat, light, power, water sources, and air conditioning that may be reasonably required for the efficient operation of the Food Service Areas.

e) Provide sanitary toilet facilities for Caterer's Personnel in Caterer's designated areas.

f) Provide cleaning services in all areas of the Center, excluding the Food Service Areas.

g) Provide office space for the GM and for administrative activities such as purchasing, invoice reconciliation, storage and payroll as set forth in Addendum II. Caterer shall supply office equipment as needed. Caterer shall provide a list of all Caterer-owned and leased office equipment brought on site to the City's Director on the annual anniversary date of this Agreement for the term of this Agreement.

h) Provide periodic major repair of floors, carpets, ceilings, walls, windows, light fixtures, draperies, blinds and vents in the Food and Beverage Service Areas.

34.2 Caterer shall be responsible for clearing all blockages to sewer lines at the Facility caused by Caterer.

XXXV. CITY'S ACCESS TO AND USE OF FACILITY

City shall have the right to use the dining areas and meeting spaces in the Center and Lila Cockrell Theater 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.

XXXVI. TERMINATION OF CONTRACT

36.1 In the event that Caterer 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 Caterer 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 the City's Director); and

b) If the Caterer 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 Caterer at least 30 days 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 Caterer.

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

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

a) Give City notice of default, specifying the corrective action and providing a 30 day time period within which corrective action must be taken; if 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 by City; and
b) If City has failed to complete such corrective action within the stated time period, Caterer may terminate this Agreement and/or seek any remedy available at law or in equity, provided that, if Caterer intends to terminate this Agreement, then Caterer must give City at least 60 days' prior written notice of such intention. At the expiration of such notice period, Caterer's obligations and duties hereunder will end.

36.3 Upon the effective date of termination of this Agreement, Caterer shall relinquish occupancy of the Food Service Areas to City except, however, if a transition period is directed by City as stated in Section 2.2 of this Agreement. Caterer shall return all areas, equipment, and other items furnished by City in the condition in which received by Caterer, reasonable wear and tear excepted.

36.3.1 A joint inventory shall be immediately undertaken to establish the existence and condition of all Food Service Equipment.

36.3.2 A walk-through of the Food Service Areas shall also be taken to inventory its condition at that time.

36.4 Upon expiration or termination of this Agreement the initial complement of equipment and smallwares shall become the property of City. Caterer shall have the option, to be exercised in its sole

discretion, of buying at fair market value, some or all equipment and smallwares owned by Citywhich are maintained at the Facility.

36.5 If, within 30 days of termination of this Agreement, City determines that any part of the Food Service Areas and/or Food Service Equipment are damaged by Caterer, and that such condition was not evident in the final inventory or walk-through as described in Sections 36.2.1 and 36.2.2, City reserves the right to have Caterer pay for repairs to said damaged areas and/or equipment caused by Caterer. This clause shall survive the expiration of this Agreement.

36.6 Caterer shall be responsible for all direct losses and damages to City including but not limited to the Food Service Areas, resulting directly from Caterer's default, failure to observe the terms and conditions of this Agreement, or from Caterer's negligence.

XXXVII. INDEPENDENT CONTRACTOR

Caterer 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 Caterer under this contract and that Caterer has no authority to bind City. The doctrine of respondeat superior shall not apply as between City and Caterer.

XXXVIII. CONFLICT OF INTEREST

38.1 Caterer 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 the City or in the sale to the 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.

38.2 Pursuant to the subsection above, Caterer 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. Caterer further warrants and certifies that is has tendered to City a Discretionary Contracts Disclosure Statement in compliance with City's Ethics Code.

XXXIX. ASSIGNMENT AND SUBCONTRACTING

39.1 Caterer 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 Caterer. Caterer, its employees or its subcontractors shall perform all necessary work.

39.2 Caterer 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, such consent to not be unreasonably withheld. As a condition of such consent, if such consent is granted, Caterer shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor Caterer, assignee, transferee or subcontractor.

39.3 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 Caterer 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 Caterer shall thereupon cease and terminate, in accordance with Article VII Termination, notwithstanding any other remedy available to City under this Agreement. The violation of this provision by Caterer shall in no event release Caterer from any obligation under the terms of this Agreement, nor shall it relieve or release Caterer from the payment of any damages to City, which City sustains as a result of such violation.

39.4 Any work or services provided by Caterer'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 the 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 Caterer. City shall in no event be obligated to any third party, including any subcontractor of Caterer, for performance of services or payment of fees.

XL. LAW APPLICABLE

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.

XLI. VENUE

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.

XLII. AMENDMENTS

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 Caterer and dated subsequent to the date hereof, and subject to City Council approval, if required.

XLIII. SEVERABILITY

If any clause or provision of this contract 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 contract 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 contract that is invalid, illegal, or unenforceable, there be added as a part of the contract 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.

XLIV. COMPLIANCE

Caterer 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.

XLV. ACTS OF GOD

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 Caterer 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 the City, then, notwithstanding any other remedies available to City under this Agreement, this Agreement shall terminate. City shall not be liable or responsible to Caterer for any damages caused thereby and Caterer hereby waives any claims against City for damages by reason of such termination.

XLVI. NON-WAIVER OF PERFORMANCE

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.

XLVII. NOTICE

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
P.O. Box 1809
San Antonio, TX 78296-1809

If intended for Caterer, to:

The RK Culinary Group LLC
Attn: Greg Kowalski
The RK Group
Managing Member
1220 East Commerce
San Antonio, TX 78205

XLVIII. INTELECTUAL PROPERTY

48.1 Caterer 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.

48.2 **Caterer agrees to INDEMNIFY and DEFEND 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 Caterer or its designee of copyrighted materials during the term of this Agreement.**

XLIX. LEGAL AUTHORITY

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

L. PARTIES BOUND

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.

LI. CAPTIONS

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.

LII. EXHIBITS

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.

EXHIBIT A : City's Request for Proposal
EXHIBIT B: RK Culinary Group LLC Articles of Incorporation and Joint Venture Agreement
EXHIBIT C: Description of Facility
EXHIBIT D: Caterer's Food Service Implementation Plan
EXHIBIT E: Mutual Termination Agreement
EXHIBIT F: Caterer's Office Furniture, Fixtures & Equipment List
EXHIBIT G: City's Food Service Equipment List

LIII. ENTIRE AGREEMENT

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 Section XLVII. Notices.

WITNESS OUR HANDS, EFFECTIVE as of _____ ___, 2015:

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to City Ordinance Number 2015-05-21-____, dated May 21, 2015, and Caterer pursuant to the authority of its Managing Partner.

CITY OF SAN ANTONIO,
a Texas Municipal Corporation

_____
Sheryl L. Sculley
CITY MANAGER

RK CULINARY GROUP LLC
by and through its Managing Member
The RK Group

By: _____
Greg Kowalski
President and CEO

ATTEST:

_____
Leticia Vacek
CITY CLERK

APPROVED AS TO FORM:

_____
Martha G. Sepeda
ACTING CITY ATTORNEY