C70538
07-0714

# FOOD AND BEVERAGE MANAGEMENT CONTRACT

**THE STATE OF TEXAS** §
§
**COUNTY OF HARRIS** §

## I. PARTIES

A. Address

**THIS FOOD AND BEVERAGE MANAGEMENT CONTRACT** ("Contract") is made by and between the **CITY OF HOUSTON, TEXAS** ("City"), a municipal corporation and home-rule city of the State of Texas principally situated in Harris County, acting by and through its governing body, the City Council and a joint venture between **ARAMARK SPORTS AND ENTERTAINMENT SERVICES OF TEXAS, LLC,** a Texas limited liability company, and **QUALITY CONCESSION FOODS, INC.**, a corporation doing business in the State of Texas (collectively "Caterer" or "Contractor").

The initial addresses of the parties, which one party may change by giving written notice of its changed address to the other party, are as follows:

City

Director of Convention & Entertainment Facilities or Designee
City of Houston
P.O. Box 61469
Houston, Texas 77208

Caterer

Aramark Sports and Entertainment Services of Texas, LLC
1101 Market Street
Philadelphia, PA 19107-2988
Attn: President,
ARAMARK Sports and Entertainment Services

Quality Concession Foods, Inc.
17109 Champions Lake Way Drive
Tomball, TX 77375
Attn: Darryl King, President

B. Table of Contents

The City and the Caterer hereby agree to the terms and conditions of this Contract. This Contract consists of the following sections:

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C. Signatures

**IN WITNESS HEREOF,** the City and the Caterer have made and executed this Contract in multiple copies, each of which is an original.

ATTEST/SEAL:

By:
Name:
Title:

ARAMARK SPORTS AND ENTERTAINMENT SERVICES OF TEXAS, LLC
(JOINT VENTURER)

By: Nora Betty McCann
Name:
Title:

ATTEST/SEAL:

By:
Name:
Title:

QUALITY CONCESSION FOODS, INC.
(JOINT VENTURER)

By:
Name:
Title:

ATTEST/SEAL:

City Secretary

CITY OF HOUSTON, TEXAS
Signed by:

Mayor

APPROVED:

Director, Convention & Entertainment Facilities Department

COUNTERSIGNED BY:

City Controller

APPROVED AS TO FORM:

Sr. Assistant City Attorney
L.D. File No.

DATE COUNTERSIGNED:

7-2-07

## II. DEFINITIONS

1. **"Accounting Period"** shall refer to the Caterer's four or five week fiscal periods (months), of which there must be twelve within each calendar year.

2. **"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.

3. **"Branded Products"** shall refer to those Food Service items or concepts which are advertised, marketed and sold to the general public 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 Facilities.

4. **"Caterer"** shall refer to that party or parties selected by the City to provide the services set forth herein.

5. **"Catering" or "Catering Sales"** shall refer to any pre-arranged Food Service function of multiple customers, such as meals for conventions, at Facilities or off-site locations, where payment for the entire function rests with one individual or company.

6. **"City"** shall refer to the City of Houston acting by and through the Director of the Convention & Entertainment Facilities Department, or his or her designee.

7. **"Concession Sales"** means all sales of food and beverages sold from permanent or portable concession stands or roving vendors to individual customers.

8. **"Contract Year"** shall refer to the period between July 1, 2007 and June 30, 2008, and every July 1st through June 30th for every year thereafter until the Contract expires or terminates.

9. **"Department"** means the City of Houston Convention and Entertainment Facilities Department or its successor.

10. **"Direct Operating Costs"** or **"Direct Costs"** are the actual out-of-pocket costs of the Food Service operation incurred at the Facilities, as approved by the Director. These costs include the actual expense of the product less any corporate rebates on food supplies or Equipment purchased, on-site payroll, payroll taxes, fringe benefits, and other operating expenses, such as repairs and maintenance, cleaning and office supplies, and a marketing fund.

    Direct Operating Costs do not include any corporate overhead or corporate administrative expenses, Late Fees, relocation expenses, except to the extent approved in advance and in writing by the Director, or the cost of insurance premiums in excess of the amount described below. Additionally, cash shortages in excess of one-quarter percent (1/4%) of monthly cash register sales may not be deducted from Gross Receipts or taken as a Direct Operating Cost. Caterer may set its own credit terms for accounts receivable; therefore, uncollected or bad debts are not allowed as a Direct Operating Cost or as a deduction from Gross Receipts, with

the exception of when the City has required Caterer to extend credit to a customer. Expenses related to criminal activities (e.g., theft, arson, vandalism, employee dishonesty) are not Direct Costs. Direct Costs not included in Caterer's proposal, on file in the Director's office, and Direct Costs not clearly related to the Food Service operation, such as travel expenses, professional services, and legal fees, are subject to the Director's prior written approval. Caterer should provide written explanations to the Director when seeking approval of such expenditures. Personnel expenses shall not exceed the costs projected in Caterer's proposal by more than three percent (3%) in any given Contract Year without the prior written consent of the Director. There is a cap on the cost of the performance bond and all insurance, including Worker's Compensation insurance: Caterer shall pay for, and not include as a Direct Operating Cost, any insurance and performance bond expenses in excess of 1.5% of Gross Receipts.

11. "**Director**" shall mean the Director of the City of Houston Convention & Entertainment Facilities Department, or such person as he or she shall designate.

12. "**Effective Date**" means July 1, 2007.

13. "**Equipment**" shall refer to all Food Service furniture and machinery, Smallwares and Leasehold Improvements, serving counters, carts, portable serving counters, dollies, trucks, computers, software, and office furniture used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product.

14. "**Facilities**" shall refer to the George R. Brown Convention Center (which includes a Starbucks café and any food and beverage franchises located inside or in close proximity to the convention center), Jones Hall for the Performing Arts, Jones Plaza, the Miller Outdoor Theatre, Root Memorial Square Park, the Wortham Theater Center, and auxiliary spaces in and about those venues, all located in the city of Houston, Texas.

15. "**Food Services**" shall refer to all Food Service sales and operations at the Facilities, whether Alcoholic Beverages, Branded Products, cafeteria, Catering, Concession Sales, or Retail Services.

16. "**Gross Receipts**" shall refer to the total amount of money, gratuities, service and rental charges, and any interest earned thereon, received or charged by the Caterer or any agent or employee of the Caterer for all sales, cash or credit, whether collected or not, made as a result of the service rights granted under the Contract, <u>excluding applicable sales taxes and Texas Alcoholic Beverage Commission ("TABC") taxes</u>. For purposes of determining the Incentive, the net commission of subcontractor fees paid to the Caterer shall be included in Caterer's Gross Receipts, rather than the subcontractor's total gross receipts.

17. "**Incentive**" shall refer to the percentage of Gross Receipts above a predetermined amount, that the Caterer may earn in a Contract Year as provided in Exhibit "H"—Payment. The amount of the Incentive may not exceed 20% of Caterer's Total Compensation in a Contract Year. The fixed Management Fee can be a different fixed fee for each year of the Contract Term (but must still be no less than 80% of the Caterer's Total Compensation).

18. "**Late Fee**" is the charge assessed to any payments due the City from the Caterer after the specified date in the Contract. Late Fees shall be pro-rated daily based on an annual rate of eighteen percent (18%). Late Fees are payable by the Caterer and not allowed as a Direct Operating Cost.

19. "**Leasehold Improvements**" shall refer to all equipment, fixtures, furnishings, finishes and construction affixed to the building.

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

21. "**Management Fee**" shall be the lump sum amount paid to the Caterer by the City for managing the Food Services, as provided in Exhibit "H".

22. "**Net Profit**" shall mean for any Accounting Period, the excess, if any, of Gross Receipts over the sum of applicable and/or prorated Direct Operating Costs, City approved depreciation, the prorated Management Fee and the earned Incentive.

23. "**Retail Services**" shall mean the sale of souvenirs, gifts, and similar merchandise.

24. "**Smallwares**" shall refer to the serviceware, pots, pans, sheet pans, utensils, silverware, chafing dishes, serving trays, crockery, glassware, dishware, cutlery, linen, skirting, napkins, and tablecloths used in the Food Service operation.

25. "**Starbucks**" shall mean the franchised Starbucks café location on the second floor of the George R. Brown Convention Center.

26. "**Total Compensation**" shall refer to the total revenues the Caterer may earn at the Facilities, which is comprised of the Management Fee and the Incentive.

27. "**Value-Added Contributions**" shall mean voluntary contributions from Caterer in furtherance of the Contract, which shall not be charged to the City.

## III. DUTIES OF CATERER

A. Scope of Service

For and in consideration of the License granted herein, Caterer shall provide all labor, material, equipment and supervision necessary to perform the services described in Exhibit "A" and shall remit all amounts due to the City as specified in Exhibit "H".

B. Coordinate Performance

Caterer shall coordinate its performance with the Director and other persons that the Director designates. Caterer shall promptly inform the Director and other person(s) of all significant events relating to the performance of this Contract.

C. Prompt Payment of Subcontractors

Caterer shall make timely payments to all persons and entities supplying labor, materials, or equipment for the performance of this Contract. **CONTRACTOR SHALL DEFEND AND INDEMNIFY THE CITY FROM ANY CLAIMS OR LIABILITY ARISING OUT OF CONTRACTOR'S FAILURE TO MAKE THESE PAYMENTS.** Caterer shall submit disputes relating to payment of MWBE subcontractors to arbitration in the same manner as any other disputes under the MWBE subcontract.

D. Personnel of the Caterer

Caterer shall replace any of its personnel or subcontractors whose work product is deemed unsatisfactory by the Director.

**E. RELEASE**

**THE CATERER, ITS PREDECESSORS, SUCCESSORS, AND ASSIGNS HEREBY RELEASE, RELINQUISH, AND DISCHARGE THE CITY OF HOUSTON, ITS PREDECESSORS, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, AND ITS FORMER, PRESENT AND FUTURE AGENTS, EMPLOYEES AND OFFICERS FROM ANY LIABILITY ARISING OUT OF THE SOLE AND/OR CONCURRENT NEGLIGENCE OF THE CITY OF HOUSTON FOR ANY INJURY, INCLUDING DEATH OR DAMAGE TO PERSONS OR PROPERTY WHERE SUCH DAMAGE IS SUSTAINED IN CONNECTION WITH OR ARISING OUT OF THE WORK PERFORMED UNDER THIS CONTRACT.**

**F. INDEMNIFICATION**

**CATERER COVENANTS AND WARRANTS THAT IT WILL PROTECT, DEFEND, AND HOLD HARMLESS THE CITY, ITS EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, THE "CITY") FROM ANY AND ALL THIRD PARTY CLAIMS, DEMANDS, AND LIABILITY, INCLUDING DEFENSE COSTS, RELATING IN ANY WAY TO DAMAGES, CLAIMS, OR FINES ARISING BY REASON OF OR IN CONNECTION WITH CATERER'S ACTUAL OR ALLEGED NEGLIGENCE OR OTHER ACTIONABLE PERFORMANCE OR OMISSION OF THE CATERER IN CONNECTION WITH OR DURING THE PERFORMANCE OF THE DUTIES UNDER THIS AGREEMENT. CATERER FURTHER EXPRESSLY COVENANTS AND AGREES TO PROTECT, DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY FROM ALL CLAIMS, ALLEGATIONS, FINES, DEMANDS, AND DAMAGES RELATING IN ANY WAY TO THE ACTUAL OR ALLEGED JOINT AND/OR CONCURRENT NEGLIGENCE OF THE CITY AND CATERER, WHETHER CATERER IS IMMUNE FROM LIABILITY OR NOT.**

**IT IS THE EXPRESS INTENTION OF THE PARTIES HERETO THAT THE INDEMNITY PROVIDED HEREIN IS AN AGREEMENT BY THE CATERER TO INDEMNIFY AND PROTECT THE CITY FROM THE CITY'S OWN NEGLIGENCE WHERE SAID NEGLIGENCE IS AN ALLEGED OR ACTUAL CONCURRING PROXIMATE CAUSE OF ANY ALLEGED THIRD-PARTY HARM.**

**THE INDEMNITY PROVISION PROVIDED HEREIN SHALL HAVE NO APPLICATION TO ANY CLAIM OR DEMAND WHERE BODILY INJURY, DEATH, OR DAMAGE RESULTS ONLY FROM THE SOLE NEGLIGENCE OF THE CITY UNMIXED WITH ANY FAULT OF THE CATERER.**

**NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE LIABILITY OF THE CATERER UNDER THIS INDEMNITY PROVISION SHALL NOT EXCEED $600,000 PER OCCURRENCE.**

**G. <u>SUBCONTRACTORS' INDEMNIFICATION</u>**

**CATERER SHALL REQUIRE ALL OF ITS SUBCONTRACTORS (AND THEIR SUBCONTRACTORS) TO RELEASE AND INDEMNIFY THE CITY TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE CITY.**

**H. <u>INDEMNIFICATION - PATENT, COPYRIGHT, TRADEMARK, AND TRADE SECRET INFRINGEMENT</u>**

**CATERER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CITY, ITS AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY THE "CITY") FROM ALL CLAIMS OR CAUSES OF ACTION BROUGHT AGAINST THE CITY ALLEGING THAT THE CITY'S USE OF ANY EQUIPMENT, SOFTWARE, PROCESS, OR DOCUMENTS CATERER FURNISHES DURING THE TERM OF THIS AGREEMENT INFRINGES ON A PATENT, COPYRIGHT, OR TRADEMARK, OR MISAPPROPRIATES A TRADE SECRET. CATERER SHALL PAY ALL COSTS (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS, AND INTEREST) AND DAMAGES AWARDED.**

**CATERER SHALL NOT SETTLE ANY CLAIM ON TERMS THAT PREVENT THE CITY FROM USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS WITHOUT THE CITY'S PRIOR WRITTEN CONSENT.**

**WITHIN SIXTY (60) DAYS AFTER BEING NOTIFIED OF THE CLAIM, CATERER SHALL, AT ITS OWN EXPENSE, EITHER (i) OBTAIN FOR THE CITY THE RIGHT TO CONTINUE USING THE EQUIPMENT, SOFTWARE, PROCESS, AND DOCUMENTS OR, (ii) IF BOTH PARTIES AGREE, REPLACE OR MODIFY THEM WITH COMPATIBLE AND FUNCTIONALLY EQUIVALENT PRODUCTS. IF NONE OF THESE ALTERNATIVES IS REASONABLY AVAILABLE, THE CITY MAY RETURN THE EQUIPMENT, SOFTWARE, OR DOCUMENTS, OR DISCONTINUE THE PROCESS, AND CATERER SHALL REFUND THE PURCHASE PRICE.**

## I. INDEMNIFICATION PROCEDURES

(1) Notice of Claims. If the City or Caterer receives notice of any claim or circumstances which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within ten (10) days. The notice must include the following:

(a) a description of the indemnification event in reasonable detail,

(b) the basis on which indemnification may be due, and

(c) the anticipated amount of the indemnified loss.

This notice does not estop or prevent the City from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If the City does not provide this notice within the ten (10) day period, it does not waive any right to indemnification except to the extent that Caterer is prejudiced, suffers loss, or incurs expense because of the delay.

(2) Defense of Claims

(a) Assumption of Defense. Caterer may assume the defense of the claim at its own expense with counsel chosen by it that is reasonably satisfactory to the City. Caterer shall then control the defense and any negotiations to settle the claim. Within ten (10) days after receiving written notice of the indemnification request, Caterer must advise the City as to whether or not it will defend the claim. If Caterer does not assume the defense, the City shall assume and control the defense, and all defense expenses constitute an indemnification loss.

(b) Continued Participation. If Caterer elects to defend the claim, the City may at its own expense retain separate counsel to participate in (but not control) the defense and to participate in (but not control) any settlement negotiations. Caterer may settle the claim without the consent or agreement of the City, unless it (i) would result in injunctive relief or other equitable remedies or otherwise require the City to comply with restrictions or limitations that adversely affect the City, (ii) would require the City to pay amounts that Caterer does not fund in full, (iii) would not result in the City's full and complete release from all liability to the plaintiffs or claimants who are parties to or otherwise bound by the settlement.

J. Insurance

With no intent to limit Caterer's liability or the indemnification provisions set forth herein, the Caterer shall provide and maintain certain insurance in full force and effect at all times during the term of this Contract and any extensions thereto. Such insurance is described as follows:

(a) Risks and Limits of Liability. The insurance, at a minimum, must include the following coverages and limits of liability:

| (Coverage) | (Limit of Liability) |
| --- | --- |
| Workers' Compensation Employer's Liability | Statutory Amount<br>Bodily Injury by accident $500,000 (each accident)<br>Bodily Injury by Disease $1,000,000 (policy limit)<br>Bodily Injury by Disease $500,000 (each employee) |
| Commercial General Liability: Including Broad Form Coverage, Contractual Liability, Bodily and and Personal Injury, and Completed Operations | Bodily Injury and Property Damage, Combined Limits of $1,000,000 each Occurrence and $2,000,000 aggregate |
| Excess Liability | Bodily Injury and Property Damage, Combined Limits of $5,000,000 each Occurrence and $5,000,000 aggregate |
| ALL RISK covering Improvements, Trade Fixtures and Equipment (including fire, lighting, vandalism, and extended coverage perils) | [Replacement Value] |
| Automobile Liability Insurance (for automobiles used by the Caterer in the course of its performance under this Contract, including Employer's Non-Ownership and Hired Auto Coverage) | $1,000,000 combined single limit per occurrence |
| Liquor Liability Policy | $1,000,000 per occurrence<br>$2,000,000 aggregate |

Aggregate Limits are per 12-month policy period unless otherwise indicated.

(b) Form of Policies. The insurance may be in one or more policies of insurance, the form of which must be approved by the Director. It is agreed, however, that nothing the Director does or fails to do shall relieve the Caterer from its duties to provide the required coverage hereunder, and Director's actions or inactions will never be construed as waiving City's rights hereunder.

(c) Issuers of Policies. The issuer of any policy shall have a Certificate of Authority to transact insurance business in the State of Texas or have a Best's rating of at least B+ and a Best's Financial Size Category of Class VI or better, according to the most current edition Best's Key Rating Guide, Property-Casualty United States. Each

issuer must be responsible and reputable, must have financial capability consistent with the risks covered, and shall be subject to approval by the Director in his or her sole discretion as to conformance with these requirements.

(d) Insured Parties. Each policy, except those for Workers' Compensation and Employer's Liability, must include the City (and its officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Contract.

(e) Deductibles. Caterer shall assume and bear any claims or losses to the extent of any deductible amounts and waives any claim it may ever have for the same against the City, its officers, agents or employees.

(f) Cancellation. Each policy must expressly state that it may not be canceled or nonrenewed unless thirty (30) days' advance notice of cancellation is given in writing to the Director by the insurance company. Caterer shall give written notice to the Director within five (5) days of the date upon which total claims by any party against Caterer reduce the aggregate amount of coverage below the amounts required by this Contract. In the alternative, the policy may contain an endorsement establishing a policy aggregate for the particular project or location subject to this Contract.

(g) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, its officers, agents or employees.

(h) Endorsement of Primary Insurance. Each policy hereunder except Workers' Compensation and Professional Liability (if any) shall be primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder.

(i) Liability for Premium. The Caterer shall be solely responsible for payment of all insurance premium requirements hereunder, and the City shall not be obligated to pay any premiums.

(j) Subcontractors. Caterer shall require all subcontractors to carry insurance naming the City as an additional insured and meeting all of the above requirements except amount. The amount shall be commensurate with the amount of the subcontract, but in no case shall it be less than $500,000 per occurrence. Caterer shall provide copies of such insurance certificates to the Director.

K. Proof of Insurance

(a) Prior to commencing any services and at any time during the term of work under this Contract, Caterer shall furnish Director with Certificates of Insurance, along with an Affidavit from the Caterer confirming that the Certificate accurately reflects the insurance coverage that will be available during the Contract Term. If requested in writing by the Director, the Caterer shall furnish

the City with copies of Caterer's actual insurance policies. Failure of Caterer to provide copies, as requested, may be deemed, in the Director's and/or City Attorney's discretion, to constitute a breach of this Contract. If Caterer advises the City in writing that portions of such policies contain proprietary information, City agrees to notify the Texas Attorney General of Caterer's contention should a Texas Public Information Act Request be made, and thereafter permit Caterer's legal counsel to pursue exempting any proprietary information with the Texas Attorney General.

(b) Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that Caterer, continuously and without interruption, maintain in force the required insurance coverages set forth above. Failure of the Caterer to comply with this requirement shall constitute a default of Caterer allowing the City, at its option, to immediately suspend or terminate work under this Contract. Caterer agrees that the City shall never be argued to have waived or be estopped to assert its right to terminate this Contract hereunder because of any acts or omissions by the City regarding its review of insurance documents provided by Caterer, its agents, employees or assigns.

L. Other Insurance

The Caterer will, upon request, furnish to the City adequate evidence or provisions for Social Security and Unemployment Compensation Insurance, to the extent such provisions are applicable to the Caterer's operations hereunder.

M. Licenses and Taxes

1. Licenses

The Caterer shall pay for, as Direct Operating Cost, and obtain all licenses and permits necessary for the operation of said business, including those required for the on-premise sale of Alcoholic Beverages. In the event that Caterer does not obtain an Alcoholic Beverage License for any reason whatsoever, then City may terminate this Contract as provided herein.

All licenses and permits required for the sale of Alcoholic Beverages at the Facilities shall be held in the name of the Caterer. The Caterer shall keep the licenses and permits in full force and effect and neither party shall take any action, which would impair the Caterer's ability to hold the permits. The Caterer shall prepare, file, and process all applications for renewals of the licenses and permits.

2. Taxes

The City is exempt from payment of Federal Excise and Transportation Tax and Texas Limited Sales and Use Tax. The Caterer will not assess any such taxes against the City. The City exemption certificate and federal tax identification number will be furnished by the Director to the Caterer where necessary to document this tax exemption.

Caterer agrees to pay promptly when due, all taxes assessed to the Caterer by any taxing authorities. 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 sales, operations, Equipment, or inventory, as a Direct Operating Cost.

Caterer shall pay all social security, unemployment insurance, old age retirement & other federal, state & local taxes, which are measured by the wages, salaries or other remuneration, paid to persons employed by Caterer.

N. Warranties

Caterer warrants that it shall perform all work in a good and workmanlike manner, meeting the standards of quality prevailing in Harris County, Texas for work of this kind. Caterer shall perform all work using trained and skilled persons having substantial experience performing the work required under this Contract.

With respect to any parts and goods it furnishes, Caterer warrants:

(1) that all items are free of defects in title, design, material, and workmanship,

(2) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed,

(3) that each replacement item is new or like new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced item was new), and

(4) that no item or its use infringes any patent, copyright, or proprietary right.

Caterer shall enforce all warranties on behalf of the City and shall promptly repair or replace any part or equipment that fails in normal use and service.

O. Compliance with Equal Opportunity Ordinance

Caterer shall comply with City's Equal Employment Opportunity Ordinance as set out in Exhibit "D".

P. M/W/DBE Compliance

Caterer agrees to comply with the City's Minority/Women/Disadvantaged Business Enterprise programs as set out in Chapter 15, Article V of the City of Houston Code of Ordinances insofar as such programs apply to this Contract. Caterer further agrees that it will make good faith efforts to award subcontracts or supply agreements in at least **15%** of Gross Receipts to Minority/Women and Disadvantaged-owned Business Enterprises certified by the City's Affirmative Action Division. In addition, Caterer acknowledges that it has reviewed the requirements for good faith efforts that are on file with the City's Affirmative Action Division and Caterer acknowledges that it has reviewed and is familiar with such requirements and will comply with them.

Caterer shall require all written subcontracts with all M/W/DBE subcontractors and suppliers which must contain the terms set out in Exhibit "C". If Caterer is an individual person (as distinguished from a corporation, partnership, or other legal entity), and the amount of the subcontract is $50,000 or less, then the subcontract must also be signed by the attorneys of the respective parties.

Q. Laws, Regulations and Directives

The Caterer will use the Facilities for no purpose other than the purposes specified herein and the business conducted thereunder will be operated in strict compliance with all applicable laws of the United States, State of Texas, City of Houston and any other governmental authority and with all health and fire codes and all applicable rules and regulations issued pursuant to such laws.

Caterer shall not permit the assigned premises of the Facilities, or any part thereof, to be used for any unlawful or immoral purpose or in any manner as to injure persons or property in, or on or near said premises.

R. Performance Bond

The Caterer shall furnish a performance bond for five hundred thousand dollars ($500,000) conditioned upon the Caterer's full and timely performance of the Contract (and payment of subcontractors). The bond must be issued in a form approved by the City Attorney and by a corporate surety listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department.

S. Graphics and Signage

All graphics and signage in the Facilities identifying the Caterer must be approved in writing by the Director before installation. The Caterer shall comply with all rules promulgated by the City and the Director regarding the placement of signs in the Facilities.

T. Maintenance and Repair

1. At the Caterer's sole cost and expense, not charged as a Direct Operating Cost, the Caterer shall promptly repair or cause to be repaired all damage to the exhibit area(s), Equipment, doors, elevators, or other City property at the Facilities caused by negligence of the Caterer, its employees, agents, or subcontractors. Damage, as used in this section, shall not include normal wear and tear. Any such repair shall be made to the reasonable satisfaction of the Director. Repairs and replacements of such items and finishes may be deducted from Caterer's Management Fee.

2. If Caterer fails to perform the maintenance and repair specified in this Section, after reasonable notice with respect thereto from the Director to Caterer, the City may perform the needed maintenance or repair and charge the Caterer the City's cost plus fifteen percent (15%).

U. Quality of Operation

All services and goods provided by the Caterer shall conform in all respects to Federal, State and City laws, ordinances, rules and regulations, specifically including but not limited to, Facility regulations reasonably promulgated by the Director.

V. Drug Detection and Deterrence

(a) It is the policy of the City to achieve a drug-free workforce and to provide a workplace that is free from the use of illegal drugs and alcohol. It is also the policy of the City that the manufacture, distribution, dispensation, possession, sale or use of illegal drugs or alcohol by contractors while on City Premises is prohibited. By executing this Contract, Caterer represents and certifies that it meets and shall comply with all the requirements and procedures set forth in the Mayor's Policy on Drug Detection and Deterrence, City Council Motion No. 92-1971 ("Mayor's Policy") and the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order No. 1-31 ("Executive Order"), both of which are on file in the Office of the City Secretary.

(b) Confirming its compliance with the Mayor's Policy and the Executive Order, Caterer, as a condition precedent to City's obligations under this Contract, will have filed with the Contract Compliance Officer for Drug Testing ("CCODT"), prior to the execution of this Contract by the City, (i) a copy of its drug-free workplace policy, (ii) the Drug Policy Compliance Agreement substantially in the format set forth in Exhibit "E," together with a written designation of all safety impact positions and, (iii) if applicable (e.g. no safety impact positions), the Certification of No Safety Impact Positions, substantially in the format set forth in Exhibit "F". If Caterer files a written designation of safety impact positions with its Drug Policy Compliance Agreement, it also shall file every six (6) months during the performance of this Contract or upon the completion of this Contract if performance is less than six (6) months, a Drug Policy Compliance Declaration in a form substantially similar to Exhibit "G". The Drug Policy Compliance Declaration shall be submitted to the CCODT within thirty (30) days of the expiration of each six (6) month period of performance and within thirty (30) days of completion of this Contract. The first six (6) month period shall begin to run on the date City issues its notice to proceed hereunder or if no notice to proceed is issued, on the first day Caterer begins work under this Contract.

(c) Caterer shall have the continuing obligation to file with the CCODT written designations of safety impact positions and Drug Policy Compliance Declarations at any time during the performance of this Contract that safety impact positions are added if initially no safety impact positions were designated. Caterer also shall have the continuing obligation to file updated designations of safety impact positions with the CCODT when additional safety impact positions are added to Caterer's employee work force.

(d) Caterer shall require that its subcontractors hereunder comply with the Mayor's Policy and the Executive Order and Caterer shall be responsible for securing and maintaining the required documents for City inspection throughout the term of this Contract.

(e) The failure of Caterer to comply with the above Sections shall be a breach of this Contract entitling City to terminate in accordance with Article VI.

## IV. PAYMENT

A. Payment

As consideration for the management of the Food Services, the Caterer shall receive the compensation described in Exhibit "H" on a monthly basis, based on the total Gross Receipts on the last day of each Contract Year. The Management Fee and Incentive will be prorated, along with the Gross Receipts threshold, for any Contract Year with less than fifty-two weeks. The Management Fee may not be less than eighty percent (80%) of the sum of the Management Fee and the Incentive. The Incentive may not be more than twenty percent (20%) of the sum of the Management Fee and the Incentive.

Caterer shall submit to the City an annual reconciliation of all losses and profits with the profit and loss statement and Net Profit payment for the last Accounting Period of each Contract Year. In any Contract Year that has no Net Profits, the City shall pay the Caterer the amount of money necessary to make Caterer's losses equal zero dollars ($0.00).

1. Caterer will put its Incentive at risk based on post-event evaluations, meeting budget goals, and other criteria, as described in Exhibit "A," Section XII.

2. Caterer shall accrue four percent **(4%)** of Gross Receipts annually to be used under the direction of the Director for marketing of the Facilities including Food Service operations.

3. The Caterer will provide all working capital and inventory necessary to effectively manage the Food Services.

4. The Caterer will prepare a profit and loss statement, in a format approved by the Director, for each Accounting Period and submit same with Net Profits no later than 15 days following the close of the preceding Accounting Period. In any Accounting Period in which there are no Net Profits, the Caterer shall accrue such loss until the next Accounting Period that has sufficient Net Profits to cover those losses. There will be an annual reconciliation of all losses or profits with a final financial statement and Net Profit payment for the last Accounting Period of each Contract Year.

5. The Caterer shall provide monthly financial reports to the Director, in a format approved by the Director. Upon request from the Director, the format of the monthly financial reports may change from time to time. Initially, the header for the monthly financial reports shall be in the following format, with all corresponding line items under each column heading.

| Current Sales and Expenses | % of Sales | Period Budget | % of Sales | Year to Date | % of Sales | Budget to Date | % of Sales | Last Year Period | % of Sales | Last Year to Date | % of Sales |
|---|---|---|---|---|---|---|---|---|---|---|---|

6. Alcoholic beverage taxes and sales taxes should appear as a separate line item, to be checked against net sales numbers for audit.

7. Caterer shall provide a written narrative with its monthly financial reports, including explanations for variances that exceed a pre-determined percentage or dollar amount of the budget.

8. Revenues from the Department's off-premises events, if any, shall be included in Caterer's Gross Receipts.

B. Business Records and Accounting Systems

Caterer shall submit, for Director approval, in a format approved by the Director, a budget for the Caterer's operation on or before March 1 prior to the beginning of each Contract Year for every year during the term of this Contract.

Caterer must submit to the Director an independent certified audit of the Caterer's operation by a firm approved by the Director no later than September 30 after the end of each Contract Year. The cost of this audit is a Direct Operating Cost. If any audit reveals a deficiency in payment to City of one percent (1%) or more, Caterer shall pay the amount thereof. Any monies payable to the City including monthly commissions or discrepancies found in audits are assessed a late fee of eighteen percent (18.0%) per annum, pro-rated daily from the day such monies were due to the City.

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

Caterer must use cash registers, computerized point-of-sale registers, or a Director-approved inventory sales method. The City shall have access to all such sales and management reports.

Caterer shall provide the Director with a preliminary sales report by 10 a.m. on the day following each event. This report shall include all sales including subcontractors at all Facilities. Caterer shall provide to the Director, in a format directed by the Director, 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.

Caterer shall maintain a separate commercial account in a Director approved bank in the City of Houston for all sales deposits.

Cash shortages over one-fourth percent (1/4%) of monthly inventory sales will be deducted from the Management Fee.

## V. CITY'S DUTIES AND RIGHTS

A. City's Duties

The City shall perform those duties assigned to its responsibility as set out in Exhibit "A" of this Contract.

B. Inspection and Approval

The Director shall have the right to enter the Food Service areas and storage spaces at all times for the purpose of examining the state of repair and condition of the premises and the Equipment and for the purpose of determining whether the terms, covenants and conditions contained in this Contract are being fully and faithfully observed and performed. The Director shall have the right to reject unacceptable standards of service and require that undesirable practices be discontinued or remedied. Failure of the Caterer to take appropriate action after notification from the Director shall be considered a breach of contract.

Prior to implementation, the Director shall have the right to approve or reject the following:

(a) Areas in which product may be sold;
(b) Areas in which Alcoholic Beverages may be sold;
(c) Dates and times sales areas may and shall be open for business;
(d) Number of sales areas that must be open for each event;
(e) Which items may be offered for sale;
(f) The brand, quality and quantity of all food, beverages, containers, packages and goods offered for sale;
(g) The price of all items offered for sale;
(h) Design of employees' uniforms including colors;
(i) The manner of use of callers, criers, hawkers, signs or other means of calling attention to or selling product;
(j) The method used for the orderly control of patrons at the sales areas;
(k) The number of employees by type;
(l) Any change in the appearance of sales areas;
(m) Maintenance and clean-up procedures and materials;
(n) Size, type and placement of any temporary or movable stands;
(o) Number and distribution of hawkers in public seating areas; and
(p) Any individuals assigned to managerial position or responsibilities on site.

The Director shall make final decisions about any and all questions that may arise as to the acceptability of services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms of this Contract, and all questions as to the acceptable fulfillment of this Contract.

C. Access by the City

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 Facilities and ingress and egress for itself, its

Licensees and the public. 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's employees are present.

## VI. TERM AND TERMINATION

A. Contract Term

This Contract shall become effective on July 1, 2007, and shall remain in effect until June 30, 2012, unless sooner terminated as provided for in this Contract.

B. Renewals

Upon expiration of the initial term, this Contract may be renewed for five (5) successive one-year terms upon the same terms and conditions if Director, at his or her sole discretion, gives a written notice of renewal to Caterer at least thirty (30) days before expiration of the then-current term. The City reserves the right to exercise one or more option years at a time, at the Director's discretion.

C. Time Extensions

If the Department requires an extension of time for Caterer to complete its performance, then the Director may, in his or her sole discretion, extend the time so long as the extension does not exceed 90 days. The extension must be in writing but does not require amendment of this Agreement. Caterer is not entitled to damages for delay(s) regardless of the cause of the delay(s).

D. Termination

1. Termination for Cause by City

If the Caterer shall fail to perform, keep and observe any of the terms, covenants or conditions of this Contract to be performed, kept or observed, such as failing to pay the correct amount of moneys due the City, the Director shall give the Caterer written notice of such default. If such default is not remedied or steps taken to remedy default to the satisfaction and approval of the Director within thirty (30) days of receipt of such notice by the Caterer, the Director may declare Caterer in default, and all of its rights under this Contract shall terminate. At the direction of the Director, the Caterer shall vacate the Facilities and shall have no right to further operate under this Contract.

If the Caterer shall fail to correct any potentially hazardous condition, the Director shall give written notice of such default. In the event such default is not remedied to the satisfaction and approval of the Director within twenty-four (24) hours of receipt of such notice by the Caterer, the Director may declare Caterer in default, and all of its rights under this Contract shall terminate.

If Caterer is placed into bankruptcy either voluntarily or by the courts, or becomes financially insolvent and unable to perform its duties under this Contract, the Director may immediately place the Caterer in default and terminate the Contract.

Should the Caterer fail to obtain or maintain the necessary licenses and permits, including the Alcoholic Beverage Licenses, the Director may place the Caterer in default.

The Director may terminate this Contract if the Caterer allows a lien to be placed on the Facilities for any work approved by or administered by the Caterer.

The Director may terminate this Contract if the Caterer repeatedly fails to work cooperatively with the City or its Licensees and/or subcontractors.

The Director shall retain the right to terminate this Contract if the Director is generally dissatisfied regarding Caterer's uncured performance, product, or services quality, based on customer surveys.

2. Termination for Cause by Contractor

In the event City defaults in the performance of any of the provisions of this Contract, Caterer must give the City written notice of such default and a thirty (30) day opportunity to cure such default. If the City fails to cure said default within thirty (30) days after written notice was given or make reasonable progress to cure said default, Caterer may declare the City in default and terminate this Contract.

E. Caterer's Responsibilities upon Contract Termination

Upon termination of this Contract for any reason, Caterer shall adhere to the following:

1. Caterer shall surrender all Alcoholic Beverage Licenses for the Facilities. Caterer shall also transfer its Alcoholic Beverage License(s), if allowed by law, at no cost, to the succeeding caterer or the City.

2. Caterer shall leave the Facilities and its Equipment, improvements, uniforms, Smallwares, furnishings, decor and appurtenances, and deliver same to the Director, in at least the same condition they were in at the commencement of the Contract, less any reasonable wear and tear. Copies of all invoices will be provided to the Director at the time of purchase to be added to the inventory. Any Equipment to be disposed of due to wear and tear will be first approved by the Director and the inventory so adjusted.

3. Caterer shall assign all Catering contracts and Catering deposits, for events that are scheduled to occur after the effective date of termination, to the succeeding caterer and cooperate fully with the succeeding caterer and the City in the transition.

## VII. MISCELLANEOUS

A. Independent Contractor

The Caterer agrees to perform the services as an independent contractor and not as a subcontractor, agent or employee of the City. This Contract shall in no way create or form a partnership or joint venture with the City.

B. Force Majeure

1. Timely performance by both parties is essential to this Contract. However, neither party is liable for delays or other failures to perform its obligations under this Contract to the extent the delay or failure is caused by Force Majeure. Force Majeure means fires, floods, and other acts of God, explosions, war, terrorist acts, riots, court orders, and the acts of superior governmental or military authority or other similar incidents outside the control of the parties.

2. This relief is not applicable unless the affected party does the following:

(a) uses due diligence to remove the effects of the Force Majeure as quickly as practicable; and

(b) provides the other party with prompt written notice of the cause and its anticipated effect.

3. The City may perform contract functions itself or contract them out during periods of Force Majeure. Such performance is not a default or breach of this Contract by the City.

4. If the Force Majeure continues more than sixty (60) days, the Director may terminate this Contract by giving seven (7) days' written notice to Caterer. This termination is not a default or breach of this Contract. **CATERER WAIVES ANY CLAIM IT MAY HAVE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM THE TERMINATION.**

5. Caterer is not relieved from performing its obligations under this Contract due to a strike or work slowdown of its employees. Caterer shall employ only fully trained and qualified personnel during a strike.

C. Severability

If any part of this Contract is for any reason found to be unenforceable, all other parts remain enforceable unless the result materially prejudices either party.

D. Entire Agreement

This Contract merges the prior negotiations and understandings of the parties hereto and embodies the entire agreement of the parties, and there are not other agreements, assurances,

conditions, covenants (expressed or implied) or other terms with respect to the services, whether written or verbal, antecedent or contemporaneous, with the execution hereof.

E. Written Amendment

Unless otherwise provided herein, this Contract may be amended only by written instrument duly executed on behalf of the City (by authority of an ordinance duly adopted by the City Council) and Caterer. The Director is only authorized to perform the functions specifically delegated to him or her in this Contract.

F. Applicable Laws

This Contract is subject to all laws of the State of Texas, the City Charter and Ordinances of the City of Houston, the laws of the federal government of the United States of America and all rules and regulations of any regulatory body or officer having jurisdiction, including the City's Charter and Code of Ordinances.

Venue for any litigation relating to this Contract shall be Harris County, Texas.

G. Notices

All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received or, if earlier, on the third day following deposit in a United States Postal Service post office or receptacle with proper postage affixed (certified mail, return receipt requested) addressed to the respective other party at the address prescribed in the preamble of this Contract or at such other address as the receiving party may have theretofore prescribed by notice to the sending party.

H. Captions

Captions contained in this Contract are for reference only, and, therefore, have no effect in construing this Contract. The captions are not restrictive of the subject matter of any section in this Contract.

I. Non-Waiver

If either party fails to require the other to perform a term of this Contract, that failure does not prevent the party from later enforcing that term and all other terms. If either party waives the other's breach of a term, that waiver does not waive a later breach of this Contract.

An approval by the Director, or by any other employee or agent of the City, of any part of Caterer's performance does not waive compliance with this Contract or establish a standard of performance other than that required by this Contract and by law. The Director is not authorized to vary the terms of this Contract.

J. Inspections and Audits

Representatives of the City shall have the right to perform, or cause to be performed, (i) audits of the books and records of the Caterer, and (ii) and inspections of all places where work is undertaken in connection with this Contract. The Caterer shall be required to keep such books and records available for such purpose for at least three (3) years after the ceasing of its performance under this Contract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

K. Enforcement

The City Attorney or his or her designee shall have the right to enforce all legal rights and obligations under this Contract without further authorization. Caterer covenants to provide to the City Attorney all documents and records that the City Attorney deems necessary to assist in determining Caterer's compliance with this Contract, with the exception of those documents made confidential by federal or State law or regulation.

L. Ambiguities

If any term of this Contract is ambiguous, it shall not be construed for or against any party on the basis that the party did or did not write it.

M. Survival

Caterer shall remain obligated to the City under all clauses of this Contract that expressly or by their nature extend beyond and survive the expiration or termination of this Contract, including but not limited to the indemnity provisions hereof.

N. Parties In Interest

This Contract does not bestow any rights upon any third party, but binds and benefits the City and Caterer only.

O. Successors and Assigns

This Contract binds and benefits the Parties and their legal successors and permitted assigns; however, this provision does not alter the restrictions on assignment and disposal of assets set out in the following section. This Contract does not create any personal liability on the part of any elected official, employee or agent of the City.

P. Business Structure and Assignments

Caterer shall not assign this Contract at law or otherwise or dispose of all or substantially all of its assets without the Director's prior written consent. Nothing in this clause, however, prevents the assignment of accounts receivable or the creation of a security interest under Section 9.406 (c) of the Texas Business & Commerce Code. In the case of such an assignment, Caterer shall

immediately furnish the City with proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Caterer shall not delegate any portion of its performance under this Contract without the Director's prior written consent.

Failure of Caterer to obtain the Director's written consent to the assignment of this Contract shall be an event of default, and Director, at his or her sole discretion, may immediately terminate this Contract. In the case of an assignment under the above sections of the Code, Caterer shall immediately furnish the City with reasonable proof of the assignment and the name, telephone number, and address of the Assignee and a clear identification of the fees to be paid to the Assignee.

Q. Remedies Cumulative

Unless otherwise specified elsewhere in this Contract, the rights and remedies contained in this Contract are not exclusive, but are cumulative of all rights and remedies which exist now or in the future. Neither party may terminate its duties under this Contract except in accordance with its provisions.

R. Consents and Approvals

Unless otherwise indicated in this Contract, the consents and approvals required under this Contract shall not be unreasonably withheld or delayed.

S. Contractor Debt

IF CONTRACTOR, AT ANY TIME DURING THE TERM OF THIS AGREEMENT, INCURS A DEBT, AS THE WORD IS DEFINED IN SECTION 15-122 OF THE HOUSTON CITY CODE OF ORDINANCES, IT SHALL IMMEDIATELY NOTIFY THE CITY CONTROLLER IN WRITING. IF THE CITY CONTROLLER BECOMES AWARE THAT CONTRACTOR HAS INCURRED A DEBT, SHE SHALL IMMEDIATELY NOTIFY CONTRACTOR IN WRITING. IF CONTRACTOR DOES NOT PAY THE DEBT WITHIN 30 DAYS OF EITHER SUCH NOTIFICATION, THE CITY CONTROLLER MAY DEDUCT FUNDS IN AN AMOUNT EQUAL TO THE DEBT FOR ANY PAYMENTS OWED TO CONTRACTOR UNDER THIS AGREEMENT, AND CONTRACTOR WAIVES ANY RECOURSE THEREFOR.

# EXHIBIT "A"

# SCOPE OF SERVICES

## EXHIBIT "A"

## SCOPE OF SERVICES

### I. Scope of Services

A. License

1. City hereby grants to Caterer the preferred right and privilege (the "License") to operate the Food Service sales at the George R. Brown Convention Center, including the Starbucks café, the Visitor Center, and any food and beverage franchises located inside the convention center, and the exclusive rights to serve Alcoholic Beverages and preferred rights for Concession Sales at the Wortham Theater Center and Jones Hall for the Performing Arts, and such other Facilities as the Director may designate. Catering at the Wortham Theater Center, Jones Hall for the Performing Arts, Jones Plaza, Miller Outdoor Theatre, and Root Memorial Square Park will be available on an open, non-exclusive basis, subject to the provisions of Section B below. Unique Catering requirements of the Facilities' Licensees, such as Kosher, Indian and other Ethnic Foods, not regularly prepared by the Caterer, may be excluded from these rights, if so directed by the Director.

2. The Director may require Caterer to set up portable concessions in Jones Plaza, the Miller Outdoor Theatre, Root Memorial Square Park, Fish Plaza, and/or Sesquicentennial Park during afternoon and evening concerts and other special events on a non-exclusive basis. Caterer may sell beer at all of these locations, depending on the event schedule.

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

4. The following areas and services at the Facilities are excluded from these rights: the parking lots of the Facilities, Catering for the locker rooms, backstage, performer, employee and/or athletic dressing rooms. Notwithstanding the foregoing, the City will not grant permission to any third party to bring any alcoholic beverages into areas of the Facility which are covered by the Caterer's alcoholic beverage license. The Founder's Salon and Green Room at the Wortham Theater Center shall not be covered by this Contract during performances and activities of the Houston Grand Opera and the Houston Ballet. The City may require the Caterer to serve these areas on an event specific non-exclusive basis.

5. No off-site or subcontracting of sales by Caterer is permitted without the written approval of the Director.

6. Vending machines are excluded from this Contract unless the Director notifies Caterer otherwise in writing. The City has pre-existing vending machine agreements that the Department will participate in throughout all or part of this Contract.

7. In addition to the Food Services described in this Exhibit "A," Caterer shall furnish all Equipment and services proposed in the Caterer's proposal, a copy of which is on file in the office of the Director. If there is any conflict between the provisions of this Contract and the provisions of Caterer's proposal, then the provisions of this Contract shall prevail.

B. Other Caterers and Free Samples

Other caterers ("Non-preferred Caterers") may provide services at the Wortham Theater Center and Jones Hall for the Performing Arts an unlimited number of times each year, provided that they pay a Non-preferred Caterer's fee directly to Caterer. The Non-preferred Caterer's fees shall be added to the Caterer's Gross Receipts and included in the calculation of Caterer's Incentive.

Non-preferred Caterer's fees are as follows (per person):

| | |
|---|---|
| breakfast | $2.50 |
| lunch functions | $5.00 |
| receptions | $7.50 |
| dinner | $10.00 |

The fees listed above are payable directly by the Non-preferred Caterers to Caterer and may not be paid separately by City clients.

The Director may request that Caterer allow other caterers to provide services at the other Facilities on a limited basis, not more than 20 times per Contract year, without a buy-out fee. When buy-out fees are applied to outside caterers, the fee will not be more than 25% of the retail sale amount of the services the outside caterer provides. The outside caterer shall pay the buy-out fee directly to Caterer.

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 Director. At the discretion of the Director, free samples may be given away by, or on behalf of, or with permission of any person, entity or organization that has properly engaged the Facilities for a trade show, convention, exhibition, or other event of like nature.

C. Sponsored Events

All Catering events sponsored or co-sponsored by the City, such as, but not limited to, tastings or marketing presentations and all events for other City departments shall be billed at actual cost of the product, service and direct labor, and shall not be included in Gross Receipts. All such costs will be credited against expense line items.

When the Convention Center showcases Houston to convention, travel, or meeting industry associations (e.g., Meeting Planners International), the Caterer will use its own corporate sponsorship funds, up to $25,000 per Contract Year, to share in the cost of the meeting or event. These investment dollars will not be treated as a Direct Cost of the operation. Caterer and the

Director will mutually approve the use of the corporate sponsorship funds prior to Caterer incurring or paying any expenses.

D. Franchise Food Service

Caterer shall have a franchise agreement to operate the Starbucks café on the second floor of the George R. Brown Convention Center during events and at other times agreed upon by the Director and Caterer.

At the Director's option, Caterer may be required to obtain franchises and operate franchise Food Services in other exterior or interior areas of the Facilities or at other locations as directed. At the Director's discretion, Starbucks may offer a discount to all City employees who present a City identification badge. The amount of the discount, to be approved by the Director, will be sufficient to cover the cost of the products sold. The discount will enable the volume of franchise business to be sufficient to cover operational costs during low sales days in which few events are scheduled, primarily for the benefit of Convention Center Hotel guests. At the Director's option, franchise Food Service may be operated by a company other than Caterer in an exterior area of the George R. Brown Convention Center.

E. Retail Services

Except for the Starbucks café and the Explore Houston Visitors' Center on the second floor of the George R. Brown Convention Center, both of which the Caterer shall operate, merchandise, souvenirs and any other non-consumables will not routinely be a part of this Contract. The Director may require the Caterer to operate a Sundry and Gift Shop or portable cart during events. From time to time, Facility Management may require that Caterer provide souvenirs for special marketing efforts and promotions. Caterer shall provide the souvenir items to the City at cost. The Marketing Fund will be used for the purchase of such items, which shall be accounted for in Caterer's monthly financial statements. Caterer shall provide Retail Services at the Explore Houston Visitors' Center, and any other Facility the Director may select. Retail Services shall be provided during any and all events Caterer and Department management determine to be advantageous.

City shall select and make available to Caterer, subject to Caterer's reasonable approval, those areas, improvements, fixtures, personal property, and equipment including, without limitation, novelty stands, customer serving locations, warehouse facilities and storage areas, administrative offices, and portable serving locations (collectively referred to as the "Retail Premises") within the George R. Brown Convention Center, or other Facilities, from which Caterer shall provide the Retail Services. City shall provide the Retail Premises on a "turn key" basis to Caterer, fully constructed, equipped, and finished to permit Caterer to provide the Retail Services in accordance with this Contract.

Revenue from the Retail Services will be included in the Gross Receipts under this Contract and shall be used in the calculation of the Management Fee as described herein.

F. Value-Added Contributions

1. At the Contract Effective Date, City shall provide all Equipment and improvements shown on Exhibit "B". Upon the Effective Date and the beginning of each Contract Year thereafter, the Caterer shall provide at its sole cost and expense, an amount not less than **ONE HUNDRED FIFTY THOUSAND DOLLARS ($150,000)**, exclusive of programming, overhead, design, and other imputed corporate costs by Caterer, for various Food Service facilities and for necessary Equipment, Leasehold Improvements, Smallwares and uniforms, collectively referred to as the "Value-Added Contributions." Notwithstanding the foregoing to the contrary, the Director may elect to receive all or any portion of the Value-Added Contributions accrued or to accrue during the first through fifth Contract Years, provided, however, total Value-Added Contributions for the first five Contract Years shall not exceed $750,000. The cost of the Value-Added Contributions will not be considered a Direct Operating Cost.

The Caterer shall submit a proposal to the Director, who may approve or disapprove the proposal in her sole discretion, of the items and locations of improvements that Caterer proposes to construct. Caterer agrees that all equipment, materials and installation costs for the construction of the improvements and any Smallware purchases shall be bid with full review of such bids by the Director. Caterer shall take full advantage of its national purchasing power and buying strength to provide the lowest possible "net" costs to maximize the Value-Added Contributions investment.

Upon the expiration or termination of this Contract, title to the Value-Added Contributions shall automatically vest in the City. Caterer shall execute a Bill of Sale (or other applicable documents as may be requested by the City) to evidence such title transfer, at any time upon the election of the Director to take title to such Value-Added Contributions.

G. Equipment, Upgrades and Improvements

With the Director's prior approval, the Caterer will purchase, as a Direct Cost, upgrades to the current Food Service Equipment, Smallwares, Uniforms and Portable Carts and may invest the capital necessary to construct and equip permanent Food Service areas in the Facilities. All costs will be competitively bid and only the Caterer's net costs will be charged. Caterer shall agree to pass along 100% of all savings it accrues from discounts, rebates, and national volume purchasing or pricing, to provide the City the lowest possible cost.

Additional Equipment that Caterer purchases throughout the course of the Contract shall become the City's property at the expiration or termination of the Contract, unless the Director elects to take title to such property at an earlier date.

The Caterer and/or its employees shall not erect, maintain or keep at the Facilities, any structure or Equipment of any kind, except with the written consent of the Director.

The Caterer shall not remove any article, piece of Equipment or other property furnished to the Facilities without the express written consent of the Director.

## II. Personnel

1. Caterer shall employ the necessary personnel to conduct the operations at the Facilities in accordance with the terms and conditions of this Contract.

2. 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 Contract 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.

3. Accurate records must be kept of the names, addresses and other legal identification of those to whom badges with photographs are issued to ensure proper identification and legal working status of employees at any time required by the City or any other proper agency. Caterer shall take all applicable actions to meet federal and state laws to ensure that its employees are legally able to work. Upon request by the Director, the Caterer shall immediately dismiss from the Facilities any employee deemed unsuitable for any reason by the Director. Any employee so dismissed shall never again be employed at the Facilities without the prior written consent of the Director.

4. Caterer's minimum full-time management staff shall include:

   a. General Manager

   b. Assistant General Manager

   c. Operations Manager (for the Convention Center)

   d. Banquet Manager

   e. Executive Chef

   f. Sous Chef

   g. Purchasing Manager

   h. One Concessions/Bar Manager for the Convention Center

   i. Two Concessions/Bar Managers for the Theater District

   j. Director of Sales and four Catering Managers

   k. Controller/Office Manager

   l. Commissary/Kitchen Steward Manager

   All of the above are collectively referred to as the "Management." Additionally, a receptionist is required to answer the telephones and greet guests in the office during regular business hours. On an annual basis, the Director and Caterer will together review the full-time management staffing requirements, but no management staffing modifications will be made without the Director's prior written approval.

5. The Director must approve Caterer's proposed on-site Management throughout the term of this Contract. Caterer's on-site Management shall have no job-related responsibilities at other venues and must have a full-time office at the Facilities. If the Director requests a replacement for the on-site Management or any of the staff, Caterer shall have five (5) days to provide a temporary replacement approved by the Director, and fifteen (15) days to provide the Director with at least three (3) resumes of suitable candidates for such purpose.

6. Caterer must conduct regularly scheduled training sessions, as approved by the Director, throughout the year, for all personnel. At a minimum, the training will consist of customer service, alcohol awareness training recognized by the TABC (Texas Alcoholic Beverage Commission), HACCP (Hazard Analysis and Critical Control Points) food preparation and sanitation, skills training for each position, including proper banquet service, buffet set up, merchandising, and wine service for all Catering personnel.

7. Caterer's employees shall be at all times neatly and cleanly uniformed in Director approved uniforms and must meet grooming guidelines and appearance standards prescribed for such employees by the Caterer and Director.

8. Free parking is not available at most of the Facilities for Caterer's employees, but discounted daily contract parking is available at the theaters. Convention Center parking is free for full-time employees in designated parking lots when available.

9. Caterer's wage scales, salary increases, and employee bonuses must be approved by the Director.

10. Caterer shall meet with the Director periodically, as requested, to discuss labor costs and other expenses related to this Contract. The parties will reach a mutual agreement about keeping Direct Costs at an optimal level to provide a consistently high quality of services.

11. Caterer shall provide staffing schedules to the Director when requested, not more frequently than on a weekly basis.

## III. Safety

1. Caterer shall develop and maintain all the necessary measures for the maximum safety of the Food Service operations, Caterer's employees, agents and subcontractors and the operations Equipment, improvements, Smallwares, uniforms, furnishings and decor.

2. The Caterer shall not permit any waste, injury, or damage upon or to the Facilities or its Equipment and appurtenances.

3. All table coverings shall be flame retardant. The use of table coverings other than cloth must be approved in advance by the Director. The Caterer must use the color of table coverings the Facility Manager requires.

4. All foods, drinks, beverages, confectionery, refreshments, and the like sold or stored for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to federal, state, county and municipal laws, ordinances, and regulations. No imitation, adulterated, or

misbranded article shall be sold or stocked for sale, and all product on hand shall be stored and handled with due regard for sanitation and in accordance with all health and safety laws and regulations.

5. Caterer must be able to safely transport, hold and merchandise all food products, including ice, to the theaters from the Convention Center in a sanitary and healthful manner approved by the City's Health and Human Services Department and deliver product to sales areas, with utmost care to eliminate drips, spills, trash or damage to the Facilities.

## IV. Operating Requirements

1. The Director shall issue reasonable rules and regulations for the operation of the Food Services in the Facilities, and the Caterer shall operate the Food Services in accordance with such rules and regulations, upon receipt of the Director's written approval or said rules and regulations.

2. Caterer shall, on an annual basis, provide Director with its price lists for all products and services, which shall be based on pricing competitive with hotels in the Houston area, such as the Hyatt, Hilton, Reliant, Four Seasons, and Westin-Galleria hotels. The Director's approval is required for all pricing lists for the upcoming Contract Year. Caterer shall provide its price lists for the first Contract Year within thirty (30) days following the Effective Date of this Contract, with a suitable competitive pricing comparison to prices at local hotels.

3. The Caterer will be required to provide or modify operations upon the request of any Licensee, when it has been approved by the Director, or is in the best interest of the Facilities or is necessary to comply with the terms of the agreement between the Facilities and said Licensee, provided that none of Caterer's Equipment is utilized when Caterer is excluded from selling. The selling of specialty ethnic foods sold by local charitable organizations at community festivals is allowed, when approved by the Director.

4. If the City seeks to bring a major political convention, NCAA tournament or other similar national or international events, Caterer will make such modifications to the Contract that are required by the Director to obtain any such event.

5. The Director shall have the final approval on which suppliers, prices, portions and brands are used, and at no time will Caterer offer an exclusive right or agreement to any supplier.

6. Caterer and all of its subcontractors shall use computerized cash or point-of-sale registers, capable of accepting credit and debit cards at all sales locations. This includes portable and permanent concession stands, cafeterias, and lounges.

7. Caterer must provide printed menus approved by the Director, utilizing the Facilities' logos, used exclusively for the Facilities, in sufficient quantities for use by City's and the Caterer's marketing staffs, as part of the Direct Operating Costs.

8. City will set rooms with sufficient tables and chairs for each Catered function. Caterer must provide and set linen, skirting and place settings on a timely basis, as well as remove same immediately following each Catered event. Caterer will provide floral decorations and other

types of decorations when and if requested by a client, at client's expense.

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

10. Caterer shall be responsible for providing water service or bottled water for all meeting rooms at no cost to the customer, when specifically requested by the Director, as part of the Direct Operating Costs.

11. Caterer shall purchase computer equipment sufficient to communicate through e-mail with Convention & Entertainment Facilities Department personnel, as part of the Direct Operating Costs. The City will provide connection to the Department's e-mail system and training to use the e-mail software.

12. Caterer will be responsible for providing radios and pagers for communicating with Convention & Entertainment Facilities Department personnel, as part of the Direct Operating Costs.

13. Caterer will be required to provide concession and catered function sheets to the Facilities representative for each and every event at least two weeks prior to the event.

14. Caterer will meet with representatives of the City and resident companies periodically to discuss their event plans.

15. In the absence of specific prior written approval by the Director, the Caterer shall not operate any other business within the Facilities except as described herein. The Caterer shall not interfere with any other contractor or employee of any other contractor working at the Facilities.

## V. Advertising and Marketing

All advertising rights at Facilities belong to the City. Caterer shall not advertise any brand names in the Facilities without the written approval of the Director. Caterer shall not use the name or logo of the Facilities on any material without the written approval of the Director. No advertising of any kind is allowed on any of Caterer's or third party's equipment unless approved by the Director. The Caterer shall not advertise in any manner or form, or about the Facilities, or elsewhere, or in any newspaper or otherwise except by means of such signs or forms of advertising as may be approved by the Director.

The Caterer shall not make any alterations in, or additions to, nor post any signs upon any part of the premises or permit signs to be posted for advertising of services of any nature on the premises or on the Caterer's person, employees, or Equipment without prior permission of the Director.

The Caterer is required to actively solicit Catering Sales for the Facilities. On an annual basis, the Caterer must provide the Director with a written marketing and Catering Sales program and budget with specific financial and operational goals and specific methods for attaining each goal.

The plan must be in keeping with the goals of the City and must be approved by the Director. Four percent (**4%**) of Gross Receipts shall be devoted to marketing. The marketing fund may also be used to support the Toyota Center suite the Department uses for marketing related functions.

The marketing fund will be deposited in a separate checking account. All marketing programs for the Facilities and costs associated therewith must be pre-approved by the Director. At the Director's discretion, the marketing fund may be used solely for marketing and promotional activities conducted by other organizations, as the Director determines most suitable to promote convention and meeting travel to Houston and the Convention Center and its related facilities. These activities may include appropriate entertainment of prospective convention and meeting planners and travel professionals in the suite licensed by the City at the Toyota Center for promotional and economic development activities and for other public and civic purposes, provided that such entertainment furthers the public and civic purposes for which the fund is established, as described above. In instances in which the City's suite is not being fully utilized by the City or another organization approved by the Director, the City shall make unused suite tickets available to Caterer to entertain clients with the intent of attracting conventions and meetings to the Convention Center.

The Director may require Caterer to use specially designed sales material, menus, cups, napkins, matches, and other material with Facility logos.

Notwithstanding anything herein to the contrary, the City may sell advertising and sponsorship packages for the Facilities, which may include product availability rights at the Facilities. Therefore, the Director reserves the final right of approval of Caterer's sources of product supply. The Caterer shall honor all rights granted to these advertisers. Caterer retains no advertising rights in this Contract.

As a part of the City's marketing efforts, the City reserves the right and option to cross-promote other dining and entertainment attractions in the George R. Brown Convention Center, and vice versa.

## VI. Quality of Services and Products

1. Caterer shall order, stock, prepare, pay for and sell appropriate pre-approved Food Service items. Caterer shall take full advantage of its national purchasing power and buying strength when buying Food Service products to provide the lowest possible costs for all items purchased.

2. Caterer shall conduct all of its operations in a first-class, professional, businesslike, and efficient manner consistent with premier convention center and performing arts center facilities.

3. The Director shall have the final approval on what suppliers, portions and brands are used by the Caterer, and at no time will Caterer offer an exclusive agreement to any supplier without the prior written approval of the Director.

4. All product for sale shall be subject to inspection and approval by the Director. Rejected product shall be immediately removed from the Facilities and shall not be returned for sale.

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

6. All Concessions Sales will utilize biodegradable disposable plates, cutlery and cups. Caterer will not use styrofoam cups or other styrofoam containers. Glassware and china will be used for the Theater District bars, buffets, wine bars, and coffee bars.

7. Catering Sales will utilize permanent Smallwares, dishes, glassware and placesettings. China and glassware are required at the theaters for bar and buffet service.

8. The City requires the Caterer to identify local products and vendors to utilize throughout the Facilities, whenever appropriate.

9. There will be no sale or advertising of tobacco products in any of the Facilities.

10. The Director will determine whether or which products may be taken into the theaters. Currently only bottled water may be taken into the seating section during theater performances. Other foods and beverages may be allowed in during Society for Performing Arts events, depending on the event.

11. Caterer shall conduct on-line customer surveys on a regular basis and share the results of such surveys with the Director and Department management.

12. Caterer will make new products and services which it has introduced at other convention centers and theaters operated by Caterer elsewhere in the United States available at the Facilities on a timely basis, to insure that Catering at the Facilities is "state of the art."

## VII. Alcoholic Beverages

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 Facilities, shall be at the sole discretion of the Director. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of the Caterer.

2. The Caterer shall be responsible for securing any and all permits for the Food Services. Any fee charged for such permits shall be the responsibility of the Caterer as a Direct Operating Cost. All licenses and permits required for the sale of Alcoholic Beverages at the Facilities shall be held in the name of the Caterer. The Caterer shall keep the permits in full force and effect and neither party shall take any action that would impair the Caterer's ability to hold the permits. The Caterer shall prepare, file, and process all applications for renewals of the permits.

3. At the termination of this Contract, Caterer shall surrender all alcoholic beverage licenses for the Facilities.

4. Caterer shall obtain all necessary and appropriate licenses, permits and bonds such as, but not limited to, the following:

   a) Mixed Beverage Permit
   b) Mixed Beverage Late Hours Permit
   c) Beverage Cartage Permit
   d) Caterer's Permit
   e) Conduct Surety Bond from the Texas Alcoholic Beverage Commission
   f) Performance bond for on premises sale of beer and wine.
   g) Bond to ensure remittance of the alcoholic beverage tax to the State Enforcement Office of the State Comptroller

## VIII. Record Keeping and Accountability

1. Caterer shall maintain all accounting records for the Facilities in a format approved by the Director at the on-site office. The accounting records shall be available for audit by the City at any time throughout the term of this Contract at the on-site office, and for three years following the expiration or termination of this Contract at the Caterer's main office.

2. Caterer shall use City compatible hardware, software and Director-approved accounting software for all Catering proposals, contracts, invoices, and all accounting functions.

3. Caterer shall submit by March 1 of each Contract Year, for Director's approval, in a format approved by the Director, a budget for its operation including anticipated gross revenues as well as City revenues of each Contract Year for the period beginning on July 1 of that year and ending June 30 of the following year.

4. Caterer shall provide the Director with a sales report by 10 a.m. on the day following each event as set forth in more detail in Article IV of this Contract.

5. Caterer must provide Department management with a list of all events at three points during the event booking process:
   a. a list of all potential/booked events for the future 12 months of the proposed budget fiscal year;
   b. a list of all potential/booked events for the upcoming three month forecast, which shall be updated monthly and presented at financial meetings; and
   c. a list of all events and their corresponding Gross Receipts that occurred for the previous month, to be presented during the monthly financial meeting.

6. Caterer shall maintain a separate commercial account in a bank in the city of Houston for all sales deposits from the Facilities. Cash shortages in excess of one-quarter percent (1/4%) of monthly cash register sales will be deducted from the Management Fee.

7. Uncollected Gross Receipts or bad debts, unless credit was extended at the direction of the Director, may not be deducted as a Direct Operating Cost, nor may they be deducted from Gross Receipts.

8. Caterer and its subcontractors must use computerized cash registers. The City shall have access to all such sales and management reports.

9. An independent certified audit of the Caterer's operation, by an accounting firm approved by the Director, must be submitted no later than ninety (90) days after the end of each Contract Year as a Direct Operating Cost.

10. 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 one percent (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 and not absorbed as a Direct Operating Cost.

11. Caterer and the City shall inventory all Equipment, Leasehold Improvements, uniforms and Smallwares on an annual basis to determine what replacements and repairs are required, and to adjust the depreciation schedule accordingly.

12. Caterer shall maintain all sales tax licenses and operating permits necessary for the Food Services.

13. 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.

14. Presently, general sales taxes in Houston are 8.25% and for Alcoholic Beverages 14.0%. Texas Alcoholic Beverage Taxes (TABT) are computed on the total amount of money collected from the customer; in other words, if Caterer's prices include taxes, Caterer will have to pay TABT on that inclusive price, not the net selling price.

## IX. Sanitation and Equipment Maintenance

1. Caterer must, in accordance with all applicable laws, ordinances, rules, and regulations, maintain, as a Direct Operating Cost, all assigned areas of the Facilities, including the space within a 25 foot radius of each area, including, but not limited to, kitchens, cafeterias, concession stands, warehouse areas, docks, dumpster areas, elevators and stairwells used by its staff, portable food stands, bars, buffets, pantries, condiment stands, storage and preparation areas in a clean, sanitary, and orderly fashion.

2. Caterer must provide adequate pest control, as a Direct Operating Cost. Such services must be performed by a contractor licensed by the State of Texas and approved by the Director for each assigned area.

3. Caterer shall maintain, as a Direct Operating Cost, Director approved levels of all Equipment, Leasehold Improvements, uniforms and Smallwares, and Caterer shall require its subcontractors to utilize equipment, uniforms and smallwares of like quality. The Caterer shall maintain a minimum of 5,000 Director approved place settings of china and silverware.

4. Caterer shall maintain, as a Direct Operating Cost, all Equipment, Leasehold Improvements, uniforms, linens, and Smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance, replacement or repair necessitated by ordinary wear and tear. Replacements made by the Caterer shall be Direct Operating Costs.

5. The Department may require the use of its in-house maintenance staff for the repairs and maintenance, if it is in the Department's best interest.

6. All carpeted floor areas must be protected with plastic and/or cardboard when setting up portable stands, bars, or service areas. Caterer will be responsible for carpet damage caused by the negligence of the Caterer, its subcontractors or agents. In addition, the Caterer will be held responsible for damage to utility floor pockets, elevators, doors, or other Facility finishes, or other equipment caused by the negligence of the Caterer, its subcontractors or agents. Damage, as used in this paragraph, shall not include normal wear and tear. Repairs and replacements of such items and finishes may be deducted from Caterer's Management Fee.

7. Caterer's employees and subcontractors will maintain a "Clean As You Go" approach in all areas of the Facilities they use. Caterer's cleaning responsibilities shall include, but are not limited to, dock areas, receiving areas, dumpster areas, Equipment storage, freight elevators, and hallways. Trash, spills, Food Service storage containers and other debris must be removed immediately to maintain the Facilities in a first class or tour-ready condition. In addition, all portable Equipment must be thoroughly cleaned before moving to storage areas.

Caterer shall deposit in receptacles provided by Caterer all waste, garbage and refuse that accumulates in the assigned areas. Garbage removal from all areas identified above shall be the sole responsibility of Caterer, as a Direct Operating Expense. All trash and garbage receptacles shall be cleaned and sanitized by Caterer to ensure a high standard of sanitation. Caterer shall provide for grease removal to avoid collection and spillage. Caterer shall provide its own sealed 30-yard compacter dumpster at the George R. Brown Convention Center and arrange for the emptying of the dumpster.

Caterer shall exercise due caution in complying with and observing all federal, state and local laws, ordinances and regulations as to sanitation, the purity of food, beverages, recycling or otherwise relating to its operation under this Contract.

## X. Utilities

1. The City will provide HVAC, electricity, gas, and water service for the Caterer's operation. Caterer shall at all times utilize prudent energy management.

2. The cost of business-related telephone service, excluding personal phone calls, shall be a Direct Operating Cost of the operation. All personal calls must be reimbursed on a monthly basis.

3. The Caterer will be responsible for bringing its trash and garbage from all Food Service areas to the designated dumpster or recycling areas.

4. The cost to repair or replace any utility service or lines due to Caterer's negligence shall be the Caterer's expense and not a Direct Operating Cost. Damage, as used in this paragraph, shall not include normal wear and tear. Caterer shall take all precautionary measures necessary to ensure that grease is not discharged into the sewers. Caterer's sewer lines shall be self-maintained as a Direct Operating Cost and shall be maintained to the satisfaction of the Director.

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

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.

7. The Caterer shall be responsible for any goods, merchandise or Equipment stored at the Facilities, and Caterer's insurance should cover any damages to Caterer's personal property resulting from a power failure, flood, fire, explosion and/or other causes.

## XI. Additions and Deletions

The Director, by means of a written authorization to Caterer, may add or delete Facilities from this Contract and any items or services provided by Caterer that are reasonably related to the scope of this Contract. Written notification of the added or deleted Facilities, items or services shall take effect upon the Caterer's receipt of such notice or on such other day as specified therein.

Charges for additions to this Contract, if any, shall be at Caterer's current rates, or at actual cost, subject to the mutual agreement of the Director and Caterer. Additions shall be included in Caterer's Direct Operating Costs and shall be reported in Caterer's financial statements to the City.

## XII.
## Performance Standards

Caterer agrees to put 100% of its Incentive at risk, based on performance standards to be mutually agreed upon by the Director and the Caterer.

On a quarterly basis, Caterer shall report to the Director whether or not it has met the following performance standards. The Caterer and the Director or Department management staff will meet on a quarterly basis, or as needed, to discuss Caterer's performance report.

| Customer Service<br>Quality External Customer Service | Available Points<br>15 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Achievement of Satisfactory or better for overall evaluation | 5 | | | | | |
| Evaluation and Corrective Action on Unsatisfactory Responses | 5 | | | | | |
| Positive impression from guest letters and other feedback | 5 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Internal Customer Service<br>Line Level staff | Available Points<br>5 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Training and improvement of service skills | 2 | | | | | |
| Quarterly Department Meetings | 1 | | | | | |
| Employee Recognition Program | 1 | | | | | |
| Participation in building committees and programs | 1 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Management Level Staff | Available Points<br>5 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Annual Performance Reviews | 2 | | | | | |
| Building Input and approvals of all new management staff | 1 | | | | | |
| Training and Exposure to other ARAMARK accounts | 1 | | | | | |
| Weekly Staff Meetings | 1 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Operations<br>Event Operations | Available Points<br>20 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Availability of Sales and Operations Staff | 3 | | | | | |
| Adequate staffing for events and during non-event days | 2 | | | | | |
| Skill level of staff meets industry standards | 2 | | | | | |
| Ability to accommodate staff special requests / flexibility | 2 | | | | | |
| Courteous and prompt delivery of services | 2 | | | | | |
| Professional appearance and conduct for on duty staff | 2 | | | | | |
| Quarterly refresher training of f&b staff | 2 | | | | | |
| Bi-Annual review of equipment upgrades | 2 | | | | | |
| Regular Subcontractors Meetings | 1 | | | | | |
| Equipment inventory as required by the Department | 2 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Health Inspections / Sanitation / Cleanliness | Available Points 20 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Satisfactory scores on all health inspections | 4 | | | | | |
| Implementation of ARAMARK Corp. ServeSafe program | 2 | | | | | |
| Schedule for regular cleaning of targeted areas - hoods, grease traps, dishrooms, etc | 2 | | | | | |
| Maintenance and upkeep of a "Food Handlers Card Book" for all employees | 1 | | | | | |
| Concession areas maintained during and after event usage | 4 | | | | | |
| Loading dock and storage areas are orderly and kept clean | 4 | | | | | |
| Quarterly cleanliness walkthroughs completed with Facility staff | 2 | | | | | |
| Offering of a ServeSafe Class at least once per year. | 1 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Safety | Available Points 10 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Creation of an ARAMARK safety committee for our areas | 3 | | | | | |
| Representation on the building safety committee | 3 | | | | | |
| Maintenance of all safety equipment including First Aid Kits, Eye Washes, Kitchen Mats and Safety Devices and Guards on all equipment | 2 | | | | | |
| Training on use of equipment and safety practices in the work place | 1 | | | | | |
| Timely Accident Reporting | 1 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Financial / Accounting | Available Points 10 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Operating Statements and revenue reporting generated on time | 1 | | | | | |
| Budget assessment and sales achievement. | 5 | | | | | |
| Regional audit of operation by ARAMARK Corp. performed | 2 | | | | | |
| Interaction between building accountants and the Controller to maximize resources | 1 | | | | | |
| Development of a capital spending plan in conjunction with annual budgeting | 1 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |

| Marketing / Sales | Available Points 15 | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
|---|---|---|---|---|---|---|
| Annual marketing plan developed and implemented | 3 | | | | | |
| Development of a sales collateral materials | 2 | | | | | |
| Assist with planning and execution of Site Tours and FAM Trips | 3 | | | | | |
| Involvement w/ GRB and GHCVB Teams joint marketing efforts | 3 | | | | | |
| Continue to shop and monitor quality and pricing of local competitors | 2 | | | | | |
| Quarterly client parties for current clients and to market new clients | 2 | | | | | |
| Additional points for exceptional overall performance in a category (optional) | | | | | | |
| | | | | | | |
| **Totals** | Available Points | Qtr 1 | Qtr 2 | Qtr 3 | Qtr 4 | Annual Average |
| **Total Available Points / Points Earned by Quarter** | 100 | | | | | |

As the Contract progresses, the performance standards are subject to change, by mutual agreement between the Caterer and the Director. At the Director's option, review of the Caterer's performance may take place less often than quarterly, and may be discontinued on an indefinite basis if determined to be unnecessary. The performance standards evaluation process contemplated herein shall be suspended during any periods of Force Majeure. The Incentive shall be paid once per year at the end of each Contract Year, to the extent earned based upon the criteria in this Contract, but may be accrued by Caterer in its budget on a basis that assumes 100% of the Incentive will be earned. Any accrued but unearned Incentive will be paid to the City, or otherwise as required by the Contract, at the end of each Contract Year.

At the end of each Contract Year, Caterer's scores in each category of the performance standards will be averaged, resulting in a final evaluation score for each category, which will be added together to determine a final score for the year (ranging from 0 to 100 points). The final score each Contract Year will be converted to a percentage, which will be multiplied by the maximum amount of the Incentive that Caterer is otherwise eligible to receive under the terms of this Contract, for the applicable Contract Year. As an example, a score of 90 points in any Contract Year in which Gross Receipts exceed $7,000,000 will result in Caterer receiving 90% of the maximum Incentive applicable to that Contract Year. Nothing in this section precludes termination of the Contract if Caterer fails to cure an event of default.

## XIII. Phase-Out Services

Caterer recognizes that the services provided by this Contract are vital to the City's overall efforts to provide safe and pleasant convention and entertainment facilities; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of the Contract a

successor may continue these services; that its successor caterer shall need phase-in training; and that Caterer must cooperate in order to effect an orderly and efficient transition.

Accordingly, Caterer shall be required to provide phase-out services for up to thirty (30) days prior to Contract expiration to its successor caterer **at no extra charge to the City**. Phase-out orientation shall comprise a maximum of 30 working days, 8 hours per day. Orientation may include explanation of procedures, record keeping, reports, and procurement procedures, etc. Caterer shall be totally responsible for providing the services called for by the Contract during its phase-out period. Caterer agrees to cooperate with its successor caterer in allowing as many personnel as practical to remain on the job in order to enhance the continuity and consistency of the services in the Contract. Caterer agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Caterer obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters. Additionally, at the termination or expiration of this Contract, Caterer shall assign all catering contracts and catering deposits, for events that are scheduled to occur after the effective date of termination, to the succeeding caterer and communicate with clients only with Director-approved materials.

# EXHIBIT "B"

# CITY OWNED EQUIPMENT

**Main Kitchen**:

2 - Steamers double stack (Vulcan)
3 – Steam kettles (Vulcan)
2 - Fryers 2 – compartment (vulcan)
3 – Grills gas (Vulcan)
1 - Flat top (vulcan)
2 - 6 burner stoves with 2 salamanders (vulcan)
1 - Smoker (nu-vu)
2 - Tilt skillet
1 - Roasting oven (instamatic oven)
6 - Convection oven (vulcan)
2 - Slicers (hobart)
1 - Small mixer (hobart)
1 - Large mixer (Well built)
1 - Buffalo Chopper table top (Hobart)
1 - VCM (hobart)
1 - Medium Robocup (Robocupe)
2 - Plating tables with running belt

**Cold Kitchen**:

3 - Coffee Machines
2 - Convection ovens (Bloggett)
1 - Large ice machines

**Dishroom**:

Hobart dish machine
Hobart glass washing machine

**Office Equipment**:

**Accounting Office and Cash Room**:

computers, printers, copiers,
office chairs
office cubicles
safes

**Sales and Operations Office**:

Office cubicles
computers
printer
office chairs

| Asset | Manufacturer | Quantity |
|---|---|---|
| Resister Carts | Carts of Colorado | 6 |
| 4 Well Hot Carts | Carts of Colorado | 2 |
| Flat Grill Carts | Carts of Colorado | 2 |
| Sandwich Carts-Yellow | Carts of Colorado | 2 |
| Sandwich Carts-Wood | Carts of Colorado | 1 |
| New Carver Cart | Carts of Colorado | 1 |
| Steam Table Cart 4 well | | 1 |
| Flat Table Holding Cart | | 1 |
| Old Red 4 Well Cart | | 2 |

| | | |
|---|---|---|
| Old Red Flat Cart | | 2 |
| Condiment Carts | Carts of Colorado | 4 |
| Fridge - Small Portable | Carts of Colorado | 2 |
| "Summit" dbl Pizza Oven | | 1 |
| Roller Grills | | 2 |
| Convection Oven – dbl | | 1 |
| Convection Oven – single | (Poor Condition) | 1 |
| Single "Portable Fryer" | | 1 |

**GRILL & PIZZA (Halls B & D)**

| | | |
|---|---|---|
| Fryer | | 2 |
| Grill-Flat Top/Range | | 2 |
| Ice Machine | | 2 |
| 3 Compartment Sink | | 2 |
| 2 Door Refrigerator Cooler | | 2 |
| 4x6 Beer Cooler | | 2 |
| Glycol System | | 2 |
| Built in Hot Well | | 2 |
| Starbucks Coffee Maker | | 2 |
| Impingon Oven (Pizza) | | 2 |
| 3F SS Prep Tables | | 2 |
| Hand Sink | | 4 |

**BAKERY & DELI (Halls B & D)**

| | | |
|---|---|---|
| Ice Machine | | 2 |
| Cooling Table | | 2 |
| Small Convection Oven | | 2 |
| Small Flat Top Grill | | 2 |
| SS Storage Cabinet/Counter | | 2 |
| Starbucks Coffee Machine | | 2 |
| 2 Compartment Sink | | 2 |
| Hand Sink | | 2 |
| Single Door Fridge/Freezer | | 2 |

**EXPRESS CAFÉ (Hall B-3)**

| | | |
|---|---|---|
| SS Counter/Cabinets | | 1 |
| SS Sink | | 1 |
| Hand Sink | | 1 |
| "Pizza" Prep Cooler | | 1 |
| Self Contained Steam Table 4 well | | 1 |
| Beer Cooler 4x6 | | 1 |
| Glycol System | | 1 |
| Portable Coolers | Hussman | 4 |
| | | |
| Metro Shelving | | 12 |
| Small Shelving | | 4 |
| Cash Registers | Tell | 10 |
| Cash Registers | Samsung | 8 |
| Cash Registers | Royal | 7 |
| Storage Cages | | 2 |
| Hot Boxes | Cres Cor | 4 |
| 2 Tier Sico Tables (Bar) | | 27 |

| | | |
|---|---|---|
| Black Bars | | 5 |
| New Bars | | 2 |
| Super Artic Skirts | | 12 |
| Vinyl Table Cloths | | 325 |
| Sico Flat Covers | | 25 |
| Sico 2 Tier Covers | | 30 |
| Bus Tub Covers | | 20 |
| Wooden Desk | | 1 |
| 4 Drawer File Cabinets | | 1 |
| | | |
| Blue Linen Cart | | 1 |
| Gray Utility Cart | Rubbermaid | 2 |
| Chip Racks | | 8 |
| Beer Jockey Boxes | | 6 |
| Hand Keg Pumps | | 8 |
| SS Ice Scoops | | 24 |
| | | |
| Big Hot Box | | 20 |
| Big Old Hot Box | | 14 |
| New Small Hot Box | | 8 |
| Upright Hot Box | | 12 |
| Queen Mary | | 8 |
| Speed Racks Small | | 55 |
| Chafers | | 145 |
| Speed Racks Big | | 14 |
| Big Bread Racks | | 65 |
| Coat Racks | | 8 |
| Popcorn Machine Table Tops | | 5 |
| 2 Tier Push Cart | | 15 |
| Round Chaffer Roll Top | | 9 |
| Regular Round Chaffers | | 20 |
| Tray Jacks | | 250 |
| Black Wire Cone Baskets | | 740 |
| Pour Over Coffee Machine | | 6 |
| Sheet Pans | | 955 |
| 4" Full Pans | | 184 |
| 2" Full Pans | | 927 |
| 2" half pans | | 50 |
| 4" half pans | | 100 |
| | | |
| Big White Truck-ARAMARK | | 1 |
| ARAMARK Van | | 1 |
| | | |
| **CAFETERIA** | | |
| Char grill Range | | 1 |
| 4 Burner Gas Stove | | 1 |
| 3ft Flat Tops | | 2 |
| 3 Well Gas Fryer | | 1 |
| Prep Tables S/S | | 2 |
| 2 Door R/I Freezer | | 1 |
| 2 Door R/I Cooler | | 1 |
| Metro Shelving (4ft) | | 2 |

| | | |
|---|---|---|
| 15 ft. 2 Compartment Sink Counter Unit S/S | | 1 |
| S/S Wall Shelves 8 ft. | | 2 |
| S/S Pot Racks unit | | 1 |
| Hand Sinks | | 2 |
| Built-in self service coolers(poor condition) | Delfield | 6 |
| Café Tables and Bases | | 39 |
| Blue Café Chairs (cloth with arms) | | 160 |
| Coffee Maker | Starbucks | 1 |
| Approx. 27 ft. S/S serving line (Built in) with 2 3-wells Hot Warmers | | 1 |
| Approx. 5 ft. Soup Station (Built in) | | 2 |
| Approx 4ftx25ft Serving Carver S/S (poor condition) with built-in shelves & drawers & 1 warmer | | 1 |
| S/S Drink/check out Island | | 1 |
| Approx 5x8 Bar Cooler (WI) | | 1 |

**BANQUET EQUIPMENT**

| | |
|---|---|
| Black Skirts | 105 |
| Rolling Tables | 48 |
| New Semi-bars 5-Gal | 35 |
| New Semi-bars 3-Gal | 10 |
| Old Semi-bars 5-Gal | 6 |
| Old Semi-bars 3-Gal | 12 |
| Silver Spoons | 632 |
| Silver Tongs | 150 |
| Black Cone-shaped Bread Baskets | 675 |
| Silver Banquet's Carts | 10 |
| Ladles | 10 |
| Salt Shakers | 480 |
| Pepper Shakers | 390 |
| Sugar | 700 |
| Tray Jack Covers | 85 |

**Glass, China, Silver Inventory**

| | |
|---|---|
| Dinner Forks | 6829 |
| Salad Forks | 6697 |
| Knives | 8018 |
| Spoons | 7250 |
| Butter Knives | 2047 |
| | |
| Dinner Plates | 4797 |
| Pasta Bowls | 4966 |
| Dessert Plates | 4820 |
| B & Bs | 4359 |
| Large B & Bs | 808 |
| Coffee Saucers | 4514 |
| Coffee Cups | 4772 |
| Soup Cups | 708 |

| | |
|---|---|
| Creamer Pitchers | 262 |
| | |
| Water Glasses | 8145 |
| White Wine Glasses | 3327 |
| Red Wine Glasses | 610 |
| Cordial Glasses | 1137 |
| Juice Glasses | 648 |
| Beer Steins | 90 |
| Champagne Glasses | 924 |
| Martini Glasses | 243 |
| | |
| Oval Trays | 270 |
| Water Pitchers | 516 |
| Coffee Thermals | 367 |
| | |
| Cof. Thermals (no lids) | 336 |
| Plate Covers | 863 |

| Linen Inventory | | 8/31/2006 | 12/15/2006 | 5/2/2007 |
|---|---|---|---|---|
| White | | | | |
| | 90 | 545 | 1265 | 1350 |
| | 120 | 353 | 670 | 645 |
| | Napkins | 5599 | 7450 | 6825 |
| Blue | | | | |
| | 90 | 359 | 345 | 335 |
| | 120 | 0 | 0 | 0 |
| | Napkins | 2087 | 1850 | 1925 |
| Red | | | | |
| | 90 | 227 | 215 | 206 |
| | 120 | 0 | 0 | 0 |
| | Napkins | 2383 | 2284 | 2148 |
| | | | | |
| Black Overlays - 60 | | 75 | 70 | 68 |
| Overlays Burgundy | | 100 | 100 | 100 |
| Chair Covers | | 1000 | 1000 | 1230 |
| Skirts | | 100 | 100 | 100 |
| Spandex Covers - 6ft | | 32 | 32 | 32 |
| Spandex Covers - bar | | 35 | 35 | 35 |
| Tray Jack Covers | | 100 | 100 | 124 |
| Bus Tub Covers | | 100 | 100 | 94 |
| Artic Cooler Skirts | | 19 | 32 | 32 |

# EXHIBIT "C"
# M/W/DBE SUBCONTRACT TERMS

Contractor shall ensure that all subcontracts with MWBE subcontractors and suppliers are clearly labeled "**THIS CONTRACT IS SUBJECT TO BINDING ARBITRATION ACCORDING TO THE TEXAS GENERAL ARBITRATION ACT**" and contain the following terms:

1. _____ (M/W/DBE subcontractor) shall not delegate or subcontract more than 50% of the work under this subcontract to any other subcontractor or supplier without the express written consent of the City of Houston's Affirmative Action Director ("the Director").

2. _____ (M/W/DBE subcontractor) shall permit representatives of the City of Houston, at all reasonable times, to perform (1) audits of the books and records of the subcontractor, and (2) inspections of all places where work is to be undertaken in connection with this subcontract. Subcontractor shall keep such books and records available for such purpose for at least four (4) years after the end of its performance under this subcontract. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

3. Within five business days of execution of this subcontract, Contractor (prime contractor) and Subcontractor shall designate in writing to the Director an agent for receiving any notice required or permitted to be given pursuant to Chapter 15 of the Houston City Code of Ordinances, along with the street and mailing address and phone number of such agent.

4. As concluded by the parties to this subcontract, and as evidenced by their signature hereto, any controversy between the parties involving the construction or application of any of the terms, covenants or conditions of this subcontract shall, on the written request of one party served upon the other or upon notice by Director served on both parties, be submitted to binding arbitration, under the Texas General Arbitration Act (Tex. Civ. Prac. & Rem. Code Ann., Ch. 171 -- "the Act"). Arbitration shall be conducted according to the following procedures:

a. Upon the decision of the Director or upon written notice to the Director from either party that a dispute has arisen, the Director shall notify all parties that they must resolve the dispute within thirty (30) days or the matter may be referred to arbitration.

b. If the dispute is not resolved within the time specified, any party or the Director may submit the matter to arbitration conducted by the American Arbitration Association under the rules of the American Arbitration Association, except as otherwise required by the City's contract with American Arbitration Association on file in the Office of the City's Affirmative Action Division.

c. Upon submittal of the matter to arbitration each party shall pay all fees required by the American Arbitration Association and sign a form releasing the American Arbitration Association and its arbitrators from liability for decisions reached in the arbitration.

d. In the event the American Arbitration Association no longer administers Affirmative Action arbitration for the City, the Director shall prescribe alternate procedures as necessary to provide arbitration by neutrals in accordance with the requirements of Chapter 15 of the Houston City Code of Ordinances.

e. All arbitrations shall be conducted in Houston, Texas, unless the parties agree to a different location.

# EXHIBIT "D"

## EQUAL EMPLOYMENT OPPORTUNITY

1. The contractor, subcontractor, vendor, supplier, or lessee will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, or age. The contractor, subcontractor, vendor, supplier, or lessee will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, sex, national origin, or age. Such action will include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment advertising; layoff or termination; rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor, subcontractor, vendor, supplier or lessee agrees to post in conspicuous places available to employees, and applicants for employment, notices to be provided by the City setting forth the provisions of this Equal Employment Opportunity Clause.

2. The contractor, subcontractor, vendor, supplier, or lessee states that all qualified applicants will receive consideration for employment without regard to race, religion, color, sex, national origin or age.

3. The contractor, subcontractor, vendor, supplier, or lessee will send to each labor union or representatives of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer advising the said labor union or worker's representative of the contractor's and subcontractor's commitments under Section 202 of Executive Order No. 11246, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

4. The contractor, subcontractor, vendor, supplier, or lessee will comply with all provisions of Executive Order No. 11246 and the rules, regulations, and relevant orders of the Secretary of Labor or other Federal Agency responsible for enforcement of the equal employment opportunity and affirmative action provisions applicable and will likewise furnish all information and reports required by the Mayor and/or Contractor Compliance Officer(s) for purposes of investigation to ascertain and effect compliance with this program.

5. The contractor, subcontractor, vendor, supplier, or lessee will furnish all information and reports required by Executive Order No. 11246, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to all books, records, and accounts by the appropriate City and Federal Officials for purposes of investigations to ascertain compliance with such rules, regulations, and orders. Compliance reports filed at such times as directed shall contain information as to the employment practice policies, program, and work force statistics of the contractor, subcontractor, vendor, supplier, or lessee.

6. In the event of the contractor's, subcontractor's, vendor's, supplier's, or lessee's non-compliance with the non-discrimination clause of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor, subcontractor, vendor, supplier, or lessee may be declared ineligible for further City contracts in accordance with procedures provided in Executive Order No. 11246, and such other sanctions may be imposed and remedies invoked as provided in the said Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as may otherwise be provided by law.

7. The contractor shall include the provisions of paragraphs 1-8 of this Equal Employment Opportunity Clause in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontractor or purchase order as the contracting agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

8. The contractor shall file and shall cause his or her subcontractors, if any, to file compliance reports with the City in the form and to the extent as may be prescribed by the Mayor. Compliance reports filed at such times as directed shall contain information as to the practices, policies, programs, and employment policies and employment statistics of the contractor and each subcontractor.

## EXHIBIT "E"

## DRUG POLICY COMPLIANCE AGREEMENT

I, **(Print/Type Name)**_____, **(Title)**_____, as an owner or officer of **(Name of Company)** _____, have authority to bind Contractor with respect to its bid, offer or performance of any and all contracts it may enter into with the City of Houston; and that by making this Agreement, I affirm that the Contractor is aware of and by the time the contract is awarded will be bound by and agree to designate appropriate safety impact positions for company employee positions, and to comply with the following requirements before the City issues a notice to proceed.

1. Develop and implement a written Drug Free Workplace Policy and related drug testing procedures for the Contractor that meet the criteria and requirements established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Drug Policy) and the Mayor's Drug Detection and Deterrence Procedures
for Contractors (Executive Order No. 1-31).

2. Obtain a facility to collect urine samples consistent with Health and Human Services (HHS) guidelines and a HHS certified drug testing laboratory to perform the drug tests.

3. Monitor and keep records of drug tests given and the results; and upon request from the City of Houston, provide confirmation of such testing and results.

4. Submit semi-annual Drug Policy Compliance Declarations.

I affirm on behalf of the Contractor that full compliance with the Mayor's Drug Policy and Executive Order No. 1-31 is a material condition of the contract with the City of Houston.

I further acknowledge that falsification, failure to comply with or failure to timely submit declarations and/or documentation in compliance with the Mayor's Drug Policy and/or Executive Order No. 1-31 will be considered a breach of the contract with the City and may result in non-award or termination of the contract by the City of Houston.

_____
**Date**

_____
**Contractor Name**

_____
**Signature**

_____
**Title**

**EXHIBIT "F"**

Contractor's Certification
of No Safety Impact Positions
in Performance of a City Contract

I, **(Name) (Print/Type)** _____,

**(Title)** _____, as an owner or officer of **(Contractor)** _____, have authority to bind the Contractor with respect to its bid, and I hereby certify that Contractor has no employee safety impact positions as defined in §5.18 of Executive Order No. 1-31 that will be involved in performing this City Contract. Contractor agrees and covenants that it shall immediately notify the City's Director of Personnel if any safety impact positions are established to provide services in performing this City Contract.

**Date** _____

**Contractor Name** _____

**Signature** _____

**Title** _____

# EXHIBIT "G"

## DRUG POLICY COMPLIANCE DECLARATION

I, **(Name)** **(Print/Type)**_____, **(Title)** _____, as an owner or officer of **(Name of Company)** _____, have personal knowledge and full authority to make the following declarations:

This reporting period covers the preceding six months from _____ to _____, 20_____.

_____ Initials — A written Drug Free Workplace Policy has been implemented and employees notified. The policy meets the criteria established by the Mayor's Amended Policy on Drug Detection and Deterrence (Mayor's Policy).

_____ Initials — Written drug testing procedures have been implemented in conformity with the Mayor's Drug Detection and Deterrence Procedures for Contractors, Executive Order 1-31. Employees have been notified of such procedures.

_____ Initials — Collection/testing has been conducted in compliance with federal Health and Human Services (HHS) guidelines.

_____ Initials — Appropriate safety impact positions have been designated for employee positions performing on the City of Houston contract. The number of employees on safety impact positions during this reporting period is _____.

_____ Initials — From (start date) _____ to (end date) _____ the following testing has occurred:

| | **Random** | **Reasonable Suspicion** | **Post Accident** | **Total** |
|---|---|---|---|---|
| Number of Employees Tested | _____ | _____ | _____ | _____ |
| Number of Employees Positive | _____ | _____ | _____ | _____ |
| Percent Employees Positive | _____ | _____ | _____ | _____ |

_____ Initials Any employee who tested positive was immediately removed from the City work site consistent with the Mayor's Policy and Executive Order No. 1-31.

_____ Initials I affirm that falsification or failure to submit this declaration timely in accordance with established guidelines will be considered a breach of contract.

I declare under penalty of perjury that the affirmations made herein and all information contained in this declaration are within my personal knowledge and are true and correct.

**Date** _____

**Contractor Name** _____

**Signature** _____

**Title** _____

# EXHIBIT "H"

# PAYMENT

# EXHIBIT "H"

## PAYMENT

Caterer will be paid a Management Fee of $600,000, as an allowable Direct Cost of Operations in Year 1. The Management Fee will increase by $10,000 for each year in the Contract through the last option year ending June 30, 2017.

Caterer will be paid an Incentive equal to 6% of Gross Receipts over $7,000,000 as an allowable Direct Cost of operations. This Incentive shall not exceed 20% of the sum of the Management Fee and the Incentive.

The table below shows both the Management Fee and the highest possible Incentive allowed per Contract Year.

| | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Year 6 | Year 7 | Year 8 | Year 9 | Year 10 |
|---|---|---|---|---|---|---|---|---|---|---|
| **Management Fee** | 600,000 | 610,000 | 620,000 | 630,000 | 640,000 | 650,000 | 660,000 | 670,000 | 680,000 | 690,000 |
| **Incentive** | 150,000 | 152,500 | 155,000 | 157,500 | 160,000 | 162,500 | 165,000 | 167,500 | 170,000 | 172,500 |
| **Total Fee** | 750,000 | 762,500 | 775,000 | 787,500 | 800,000 | 812,500 | 825,000 | 837,500 | 850,000 | 862,500 |

Caterer will make a Value-Added Contribution of $150,000 per Contract Year for the life of the Contract, up to a total amount of $1,500,000, to be used for items to include: enhancements to concession stands, Smallwares, catering and kitchen equipment, or other expenses required by the Director. Notwithstanding the foregoing to the contrary, the Director may elect to receive all or any portion of the Value-Added Contributions accrued or to accrue during the first through fifth Contract Years, provided, however, total Value-Added Contributions for the first through fifth Contract Years shall not exceed $750,000.

Additionally, Caterer's corporate offices will contribute up to $25,000 per Contract Year in sponsorships of industry events. These investment dollars will not be expensed as a Direct Cost of the operation.