

**CITY OF SAN ANTONIO
CONVENTION FACILITIES DEPARTMENT
CITY COUNCIL AGENDA MEMORANDUM**

TO: Mayor and City Council

FROM: Michael J. Sawaya, Convention Facilities Director

SUBJECT: Amendment and Extension of the Henry B. Gonzalez Convention Center
Food and Beverage Service Agreement

DATE: November 4, 2004

SUMMARY AND RECOMMENDATIONS

An Ordinance authorizing the Interim City Manager to execute an Amendment to the Food and Beverage Service Agreement with the RK Group Joint Venture to incorporate a new commission structure to be effective November 4, 2004. The Ordinance also authorizes the City Manager to exercise the five-year Option Term, in accordance with the terms of the current Food and Beverage Service Agreement by executing an Amended and Restated Henry B. Gonzalez Convention Center Food and Beverage Service Agreement with RK Group, L.L.C. (successor in interest to the RK Group Joint Venture). The Amended and Restated Henry B. Gonzalez Convention Center Food and Beverage Service Agreement consolidates the Food and Beverage Service rights at the Convention Center and Concession rights at the Convention Center, Municipal Auditorium, and Lila Cockrell Theater into one agreement, for a term of five (5) years commencing February 1, 2005 and terminating January 31, 2010. This ordinance also provides for an immediate effective date upon passage by 8 affirmative votes.

Staff recommends approval of this Ordinance.

BACKGROUND INFORMATION

San Antonio's Convention and Hotel/Motel industry, our community's second largest industry, generates about 5% of the City's overall revenues. Catering and concession services significantly contribute to the success and return business of meetings, trade shows, and major conventions at the Convention Center resulting in dollars spent in the community at hotels, restaurants, local attractions and local businesses. At this time, the City has an opportunity to maximize revenues from catering and concessions, enhance operations, and improve services to customers.

The Convention Facilities Department currently has four separate agreements related to catering and concessions: Food and Beverage Services at the Henry B. Gonzalez Convention Center (Convention Center); Concessions and Novelties at the Convention Center; Concessions at the Municipal Auditorium; and Novelties at the Municipal Auditorium (will remain a separate agreement.)

Convention Center Food and Beverage Service Agreement

The Henry B. Gonzalez Convention Center Food and Beverage Service Agreement (Catering Agreement) between the City and RK Group Joint Venture (RK Group JV) was approved by Ordinance #85056 on February 1, 1997 and expires on January 31, 2005. A five (5)-year extension option under the Catering Agreement requires notice from the City to RK Group JV of their intention to continue or terminate the Catering Agreement not later than 180 days preceding expiration. On July 22, 2004 the San Antonio City Council, by Ordinance #99475, amended the notice requirement to 90 days preceding expiration. On October 21, 2004 the San Antonio City Council authorized a second amendment to the Catering Agreement requiring the City give 60 days notice preceding expiration to RK Group JV. Therefore, the City is required to provide notice to RK Group JV by December 2, 2004.

Convention Center Concessions and Novelties Agreement includes Lila Cockrell Theater

The Arena Concessions Agreement (Concessions Agreement) with San Antonio Concessions, Inc. (SACI), was approved by Ordinance #69539 on May 25, 1989. The Agreement was subsequently amended on September 15, 1990 by Ordinance #72279, due to closing of the Hemisfair Arena. The Concession Agreement is due to expire September 30, 2006. The San Antonio Spurs, owner of SACI, have expressed their interest in relinquishing the Concessions Agreement as soon as possible. They no longer have a Texas Alcoholic Beverage Commission license to service the Convention Center, and have assigned alcohol concession sales at the Center to the RK Group JV, approved by Ordinance #99714 on September 16, 2004. Since 1993, ARAMARK has conducted concession operations under assignment from SACI. Thirty-two percent (32%) of customer reviews indicate service is average to unsatisfactory.

Municipal Auditorium Concessions Agreement

Since April 15, 1997, Spectrum, Inc. has been the concessionaire at the Municipal Auditorium. By recommendation of the City's consultant, Bigelow Companies, Inc., the creation of a Master Agreement for Concession services at the Center and Municipal Auditorium was anticipated. Spectrum's agreement expired on April 30, 2004; however, the agreement included a one year extension option. Rather than exercising this option, Ordinance #99586 was approved putting the Spectrum Inc. contract on a month-to-month basis, not to exceed 10 months or February 28, 2005 (the contracted caterers list and novelties contract will remain in-place at the Municipal Auditorium). Spectrum has agreed to relinquish the contract, given a 30-day notice for the transition.

On April 24, 2004, Bigelow Companies, Inc., a convention foodservice consultant, was retained to assist City staff with: 1) projecting a market rate commission structure for the Convention Center, 2) reviewing options to incorporate all concession and catering services into one agreement, and 3) recommending a new structure for Small Business Economic Development Advocacy (SBEDA) requirements in the Catering Agreement. The Bigelow report indicates that: "The Convention Center and the Food and Beverage operation have an excellent reputation for quality services." Convention Center customer survey results indicate a 99% approval rating of the RK Group JV. Only three customers in six years have rated them as "poor".

The RK Group JV proposes to restructure into The RK Group, Limited Liability Company (RKGLLC) to include the following members: Catering by Rosemary, Inc.; Black Tie Affairs Catering, Inc.; Catering by Nick; All Star Services; Chelsea's Sandwiches of Texas, Inc.; True Flavors Culinary Catering; and Absolutely Everything Catering.

In an effort to determine the City's best course of action at this time, City staff has reviewed the recommendations made by Bigelow and evaluated current catering and concession operations. Additionally, on June 10, 2004 the City Auditor released an audit of the Catering Agreement. Staff has responded to the findings of the audit, and corrective actions have been implemented.

Based upon the RK Group JV's excellent reputation for quality service combined with their history of successful sales generation, and their demonstrated ability to help small, local caterers become successful in performing convention catering activities, staff recommends that the City extend the Catering Agreement to RKGLLC, in accordance with its terms. The proposed Amended and Restated Henry B. Gonzalez Convention Center Food and Beverage Service Agreement (Extension Agreement) will include the recommendations of the foodservice consultant and address concerns of City Council by incorporating the following changes:

- Allows RKGLLC as a successor in interest to RK Group JV
- Eliminates affiliate referral commissions which are difficult to audit and/or enforce
- Eliminates commissions paid on service charges in accordance with market standard
- Consolidates concessions at the Convention Center and Municipal Auditorium with the Food and Beverage Services Agreement into one master agreement
- Redefines "Gross Receipts" to mean: "the total amount of gross revenue received by RKGLLC from Food and Beverage Services, Other Services, Rental and/or Other non-gratuity charges for all sales (whether collected or not) excluding only sales taxes and service charges. This definition is consistent with market standards.
- Eliminates the current variable rate commission structure (various percentages of commission for various types of revenue) and institutes a blended, flat rate commission structure in accordance with market standard. (See Attachment 1 for a Summary of Current and Proposed Commission Structures.) This results in a recommended 25% flat rate commission structure for Catering Food and Beverage, Alcoholic Beverages, and Other Services.
- Allows outside catering, non-commissionable, with the provision that no convention center staff, product, or equipment be used without consent of the Director and that RKGLLC makes every effort to bring the event to the Convention Center with final approval by the Director or Customer (written procedure established)

Summary of Other Amended Agreement Terms

- RKGLLC must use stationery that does not list their affiliate services in communications with Convention Center customers.
- City to have approval over staff, uniforms, pricing, menus, portions, products and source of supply.
- Non-financial terms in current contract to remain (auditing, inventories, recycling, security procedures, Director approvals, pricing study, etc.)
- Additional positions to be added to RKGLLC staff:
 - ✧ Contract Administrator and Cash Outlet Manager
- RKGLLC to develop written cash-handling procedures acceptable to the City.
- Annual pricing study to include 3 competitive convention centers nationwide and 3 local hotel catering facilities (RKGLLC has only been comparing to local markets in the current Catering Agreement.)

- RKGLLC must provide written notice prior to the submittal of any proposal for off-site events involving a Customer of the Center.
- RKGLLC will provide an annual *Report of Agreed Upon Procedures* performed by an independent CPA firm, approved by City, at RKGLLC expense.
- City may require RKGLLC to perform an audit by an independent auditing firm approved by the City. City requirement would be no more than twice during the five (5)-year term of the Extension Agreement. The City and RKGLLC will share the cost of audits equally.

The term of the recommended Extension Agreement would commence on February 1, 2005 and expire on January 31, 2010. However, in order to maximize revenues to the City for the remaining three months of the current Catering Agreement, staff recommends that it be amended to incorporate the 25% flat rate commission structure for Catering, Food and Beverage, Other and Alcohol services. Staff recommends the amendment to the Catering Agreement be effective upon approval by the City Council on November 4, 2004. Concessions and novelty commission structures will become effective on February 1, 2005 as a part of the Extension Agreement in order to give RKGLLC, SACI, and Spectrum sufficient time to transition operations.

POLICY ANALYSIS

The proposed Extension Agreement is a high profile contract due to public interest and the amount of associated revenue. Consideration was given to the impact on the use of local business for services to be performed at City facilities and to expand the Local, Small, Minority, and Woman business participation to other vendors in the community through procurement. During the Extension Agreement's term the RKGLLC would agree to the Small Business Economic Development Advocacy (SBEDA) utilization levels reflected in Attachment 2.

The Extension Agreement incorporates a "ramp-up period" for full SBEDA compliance in order to provide for new members of RKGLLC to be trained to provide acceptable levels of service at the Center. During the ramp-up period, RKGLLC will conduct off-site and on-premise training. City agrees that RKGLLC shall have a period of one year from the effective date of the Extension Agreement within which to achieve the utilization levels. If levels are not met, RKGLLC will have an additional 180 days to meet the utilization levels. If RKGLLC fails to meet the utilization levels, RKGLLC will be found in default. RKGLLC agrees that despite the ramp-up period, in no case shall SBEDA participation of its members be less than a 50% increase in gross revenue over 2003/2004 participation levels (estimated at 18%).

The RKGLLC is also committing to a Community and Partner Enrichment program. The new program will include donations of \$100,000 per year in products, goods, and/or services to San Antonio non-profit organizations and \$10,000 per year in scholarships to local students pursuing careers in the hospitality industry or in culinary arts. Additionally, RKGLLC commits to a Minority Business Enterprise (MBE) Caterers Enrichment Plan that includes culinary excellence training, business basics, business development, and management of the catering day-to-day operations through a mentor-protégé program. The Plan shall expose all of RKGLLC's MBE Members to various aspects of convention center catering and to provide an ongoing continuing education program intended to keep RKGLLC's Members current on material components of convention center engagements.

FISCAL IMPACT

In Fiscal Year 2004, the Catering Agreement generated approximately 24% of the overall revenues for the Convention Facilities Department. Commissions averaged 17.85% of Gross Sales from February 1997 through August 2004. Historical gross sales and commissions are listed in Attachment 3. Increasing the commission rate for catering services and adding concession services for the Convention Center and the Municipal Auditorium will increase projected commissions over the next 5 years by \$5,198,263 from projections based on rates in the current agreements. Attachment 4 reflects Projected Commissions.

A new formula has been agreed upon for calculating commissions on all-inclusive pricing. Commissions due City will be calculated from the amount actually billed to the Customer using a flat rate (i.e. Customer is charged all-inclusive price of \$200 per person including food, beverages, florals, tablecloths, etc.)

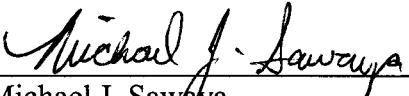
The City and Contractor have agreed upon commission rates to be paid to City on a monthly basis on or before the 20th day of the month following the previous month's activities.

COORDINATION

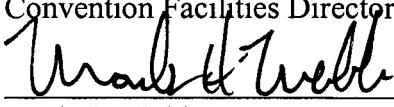
This action has been coordinated with the City Attorney's Office, the Contract Services Department, the Economic Development Department, Risk Management, and the Office of Management and Budget.

SUPPLEMENTARY COMMENTS

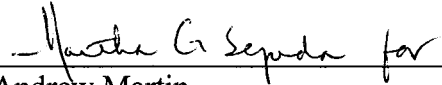
The required Discretionary Contracts Disclosure form is attached.



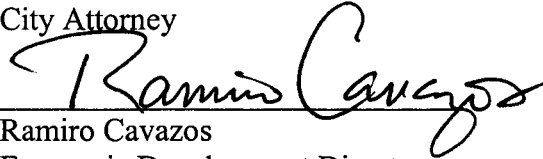
Michael J. Sawaya
Convention Facilities Director



Mark H. Webb
Contract Services Director

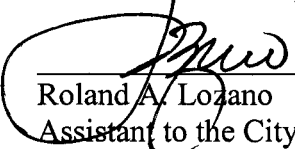


Andrew Martin
City Attorney




Ramiro Cavazos
Economic Development Director

Recommendation Approved:



Roland A. Lozano
Assistant to the City Manager

Recommendation Approved:



J. Rolando Bono
Interim City Manager

Attachment 1

Current Commission Rates

Percent of Sales

Catering Services	16.8%	62.0%
Food & Beverage Services	16.8%	27.0%
Alcoholic Beverages	27.0%	7.5%
Other Services (linens, flowers, etc.)	19.0%	3.2%
Affiliate Services**	19.0%	0%
Offsite Catering Services	5.5%	<1%

Concessions at Center	35.0%
Concessions at Auditorium	32.5%

Novelties & Souvenirs at Center	15% of the 35% collected from Gross Sales
	50% of Buyouts

**** Transportation, equipment rental, meeting planning. Affiliates of RK Group JV are Catering by Rosemary, Circa TX, Illusion Rentals, and RK Meeting Management**

Proposed Commission Structure

A flat rate commission will be paid on Gross Receipts for catering services, food and beverage services, alcohol, other services, and rentals (not including concessions) as follows:

Catering Commission Rates

Range of Sales

25%	less than or equal to \$13,000,000
22.85%	\$13,000,001 to \$15,000,000
21.10%	exceeding \$15,000,000

Concessions Commission Rates

- A commission of 35% of Gross Receipts for Non-Licensed Concession Sales.
- A commission on Gross Receipts for Licensed Concession Sales as follows:

<u>Sales Amount</u>	<u>Commission</u>
\$0 - \$100,000	15%
\$100,001 - \$250,000	20%
\$250,001 - \$400,000	25%
\$400,001 - \$550,000	30%
In excess of \$550,000	35%

- ✧ Licensed or Branded sales are franchised, nationally branded products that would require operator to pay fees on gross sales (Starbucks, Subways, etc.)
 - Significant sales increases would be expected

- Lower commissions would encourage operator to pursue franchise opportunities

Novelties & Souvenirs Commission Rate

Novelties and souvenirs are provided to the Concessionaire by the Promoter or Customer of an event. Concessionaire collects a percentage of the sales and pays the City commission on the percentage collected as defined below:

- A commission of 50% of a maximum of 35% collected by the Novelty Concessionaire of gross sales, after sales taxes, for sales performed by the Concessionaire
- A commission of 50% of a maximum of 20% collected from the sale of CD's by the Novelty Concessionaire of gross sales after sales taxes for sales performed by the Concessionaire
- A commission of 50% of a maximum of 20% collected by the Novelty Concessionaire of gross sales after sales taxes for sales performed by a Promoter or Customer. Concessionaire counts beginning and ending inventory.
 - Authorization must be received from the Director
- A commission of 50% collected from buyouts
 - A buyout is defined as an authorization for the Promoter or Customer to sell their own novelties or souvenirs and pay the concessionaire an agreed upon flat rate. Concessionaire does not perform count of inventory

Novelty and souvenirs commissions average less than \$2,000 per year, and mainly from sales at the Lila Cockrell Theater.

Attachment 2 SBEDA Utilization Levels

During the Extension Agreement's term the RKGLLC would agree to the utilization levels reflected below, to be averaged over a one-year period, for Food and Beverage Services in the Center:

FOOD AND BEVERAGE SERVICES

Minority Business Enterprise_____	31%
Women-Owned Business Enterprise_____	5%
African American Owned Business Enterprise_____	5%
Small Business Enterprise or Local Business Enterprise__	50%

PROCUREMENT

Minority Business Enterprise_____	15%
Women-Owned Business Enterprise_____	10%
African American Owned Business Enterprise_____	3%
Small Business Enterprise or Local Business Enterprise__	50%

Achievement in Procurement will be based on plus or minus 2.5% variance based upon a margin of business availability (except in AABE category which shall not be less than 2.2 %.) The requirements will be based upon the Gross Receipts received by the Contractor.

Attachment 3 Historical Gross Sales and Commissions

Gross sales and Commissions from the RK Group Joint Venture for the past seven (7) years and seven (7) months have been as follows:

1997 – 2004 Catering Gross Sales and City Commissions

<u>Fiscal Year</u>	<u>Gross Sales</u>	<u>Commissions</u>	<u>Percent of Gross</u>
1997*	\$ 3,657,922	\$ 661,174	18.08%
1998	\$ 7,007,012	\$ 1,271,229	18.14%
1999	\$ 6,197,894	\$ 1,120,496	18.08%
2000	\$ 6,820,256	\$ 1,215,370	17.82%
2001	\$ 8,524,789	\$ 1,538,821	18.05%
2002	\$12,360,318	\$ 2,155,560	17.44%
2003	\$11,464,965	\$ 2,034,386	17.74%
2004**	\$10,600,778	\$ 1,851,769	17.47%
Total	\$66,633,934	\$11,848,805	17.85% average

*Feb 1, 1997 - Sept. 31, 1997

**Oct 1, 2003 - August 31, 2004

Gross Sales and Commissions from the two (2) Concessions Agreements for the last five (5) years were as follows:

2000 – 2004 Concessions Gross Sales and City Commissions

<u>Fiscal Year</u>	<u>Concessions Gross Sales</u>	<u>Concessions Commissions</u>
<u>Convention Center – San Antonio Concessions Inc.</u>		
2000	\$ 486,134	\$ 174,608
2001	\$ 780,910	\$ 271,334
2002	\$ 958,427	\$ 338,256
2003	\$ 665,106	\$ 231,196
2004*	\$ 489,167	\$ 172,268
Total	\$3,379,744	\$1,187,662

Auditorium - Spectrum

2000	\$ 70,416	\$ 23,083
2001	\$ 48,683	\$ 15,822
2002	\$ 70,361	\$ 23,026
2003	\$ 78,352	\$ 25,358
2004*	\$ 75,400	\$ 23,574
Total	\$ 343,212	\$ 110,863

Total Concessions	\$3,722,956	\$1,298,525
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Attachment 4 Projected Commissions

The following two tables anticipate annual commissions for the next five years utilizing the improved commission structure, compare the projected commissions to commissions that were collected from the past five years and result in an increase of \$5,198,263 in commissions over the next five years.

Projected Commissions

Fiscal Year:	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Catering	\$2,593,865	\$2,645,742	\$2,698,657	\$2,752,630	\$2,807,683
CC Concessions	\$307,612	\$313,765	\$320,040	\$326,441	\$332,969
MA Concessions *	\$30,009	\$30,610	\$31,222	\$31,846	\$32,482
CC Novelties	\$9,514	\$9,704	\$9,898	\$10,096	\$10,298
Totals	\$2,941,000	\$2,999,821	\$3,059,817	\$3,121,013	\$3,183,432

* Amounts for Municipal Auditorium Concessions include an increase of 2.5% from budget projection for a total increase of \$3,809 over the five years.

Historical vs. Projected Commissions

	<u>Five-Year Historical</u>	<u>Five-Year Projection</u>	<u>Variance over Five Years</u>
Catering	\$ 8,795,906	\$13,498,577	\$ 4,702,671
CC Concessions	\$ 1,187,662	\$ 1,600,827	\$ 413,165
Auditorium Concessions	\$ 110,864	\$ 156,169	\$ 45,305
CC Novelties	\$ 12,388	\$ 49,510	\$ 37,122
Total	\$10,106,820	\$15,305,083	\$ 5,198,263
			(Increased commissions)

City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

RK Group, LLC

and the name of:

(C) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(D) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

Catering By Rosemary, Inc. – Greg Kowalski
Manuel H. Garza Jr.'s La Casita Enterprises, Inc. dba Catering By Nick – Nick Garza
Black Tie Affairs Catering, Inc. – Richard and Roger Ojeda
All Star Services – John Lopez
JAD Services, Inc. dba Absolutely Everything Catering Services – Diane Cortez
True Flavors, L.L.C – Johnny Hernandez
Chelsea's Sandwiches of Texas , Inc. – William Franklin, Joe Linson

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

(1) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

Kaufman & Associates, Inc.
KGB Texas
R.B. Pablos P.C.

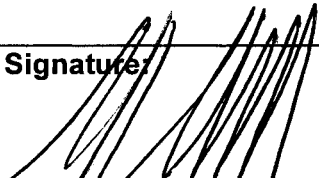
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Art Hall by Chelsea's Sandwiches of Texas	\$500	May 2004
Julian Castro by Catering by Nick	\$100	July 2004
Richard Perez by True Flavors Catering	\$500	August 2004

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

		
Signature:	Title: <i>Mindy Lee - LLC</i> Company: <i>AK Group LLC</i>	Date: <i>Oct. 19, 2004</i>

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

AN ORDINANCE

AUTHORIZING THE INTERIM CITY MANAGER TO EXECUTE AN AMENDMENT TO THE HENRY B. GONZALEZ FOOD AND BEVERAGE SERVICE AGREEMENT WITH RK GROUP JOINT VENTURE TO INCORPORATE A NEW COMMISSION STRUCTURE TO BE EFFECTIVE NOVEMBER 4, 2004; AUTHORIZING THE INTERIM CITY MANAGER TO EXERCISE THE OPTION TERM, IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE HENRY B. GONZALEZ FOOD AND BEVERAGE SERVICE AGREEMENT, BY EXECUTING THE AMENDED AND RESTATED HENRY B. GONZALEZ CONVENTION CENTER FOOD AND BEVERAGE SERVICE AND CONCESSION SERVICES AGREEMENT WITH THE RK GROUP L.L.C. (SUCCESSOR IN INTEREST TO THE RK GROUP JOINT VENTURE), FOR A TERM OF FIVE (5) YEARS COMMENCING FEBRUARY 1, 2005 AND TERMINATING JANUARY 31, 2010.

* * * * *

WHEREAS, Ordinance No. 85056, passed and approved on October 24, 1996, authorized the execution of the Henry B. Gonzalez Food and Beverage Service Agreement (the "Agreement") between the City and the RK Group Joint Venture; and

WHEREAS, the primary term of the Agreement was for an eight (8) year period commencing on February 1, 1997 and expiring on January 31, 2005 (the "Initial Term") and additional terms allow for these services to be provided by the Joint Venture for a period from February 1, 2005 to January 31, 2010 (Option Term); and

WHEREAS, Section 2.2 of the Agreement, as amended, provides that the City may exercise the Option Term within sixty (60) days of the expiration of the Initial Term of the Agreement, subject to the renegotiation of the terms and conditions of the Agreement for the Option Term; and

WHEREAS, the City and RK Group L.L.C., successor in interest to the RK Group Joint Venture, have completed negotiations for the Option Term and have memorialized the terms and conditions of the Option Term in the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement, which includes a new commission structure and the addition of concession services, when available, at the Henry B. Gonzalez Convention Center, Lila Cockrell Theater, and the City's Municipal Auditorium; and

WHEREAS, it is projected that the City would maximize revenues for the remaining three months by amending the current Agreement to incorporate a twenty-five percent (25%) flat rate

commission structure for all food and beverage services and other services provided at the Henry B. Gonzalez Convention Center and Lila Cockrell Theater for events on and after November 4, 2004 until the commencement of the Option Term; and

WHEREAS, the terms and conditions of the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement would commence on February 1, 2005; **NOW THEREFORE**:

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

SECTION 1. The terms and conditions of an amendment to the Henry B. Gonzalez Convention Center Food and Beverage Service Agreement to incorporate a twenty-five percent (25%) flat rate commission structure for all food and beverage services and other services provided at the Henry B. Gonzalez Convention Center and Lila Cockrell Theater on and after November 4, 2004 until the commencement of the Option Term is hereby authorized. A copy of the Amendment in substantially its final form is attached hereto and made a part of this Ordinance as Exhibit "A." A copy of the fully executed Amendment will be attached to this Ordinance and will replace Exhibit "A."

SECTION 2. The terms and conditions of the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement between City and RK Group L.L.C., successor in interest to the RK Group Joint Venture, is hereby authorized. A copy of the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement in substantially its final form is attached hereto and made a part of this Ordinance as Exhibit "B." A copy of the fully executed Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement will be attached to this Ordinance and will replace Exhibit "B."

Execution of the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement shall serve as notice to Contractor, as required in Section 2.2 of the Agreement, of the City's intent to exercise the Option Term of the Agreement, such term to commence on February 1, 2005 and expire on January 31, 2010.

SECTION 3. Revenues received from the Amended and Restated Henry B. Gonzalez Food and Beverage Service and Concession Services Agreement shall be identified as follows:

SAP FUND 29006000

Internal Order:Convention Center	Revenue Acct 4407200
Internal Order:Convention Center - Theater	Revenue Acct 4407910
Internal Order:Convention Center	Revenue Acct 4407230
Internal Order:Municipal Auditorium	Revenue Acct 4407230

SECTION 4. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director may, subject to concurrence by the Interim City

Manager or the Interim City Manager's designee, correct allocations to specific codes and/or numbers as necessary to carry out the purpose of this Ordinance.

SECTION 5. The Interim City Manager or his designee is hereby authorized for a period of 90 days to execute any and all documents necessary to fulfill the purpose and intent of this Ordinance.

SECTION 6. This Ordinance shall become effective on and after the tenth (10th) day after passage hereof.

PASSED AND APPROVED this 4th day of NOVEMBER 2004.

M A Y O R

ATTEST:

City Clerk

APPROVED AS TO FORM:

for *M. Zertuche*
City Attorney

EXHIBIT A

THIRD AMENDMENT TO THE HENRY B. GONZALEZ CONVENTION CENTER FOOD AND BEVERAGE SERVICE AGREEMENT

BETWEEN THE CITY OF SAN ANTONIO AND THE RK GROUP JOINT VENTURE

This THIRD AMENDMENT to the HENRY B. GONZALEZ CONVENTION CENTER FOOD AND BEVERAGE SERVICE AGREEMENT (this "Amendment") is entered into, pursuant to Ordinance Number _____ passed and approved on November 4, 2004, by and between the CITY OF SAN ANTONIO ("City") and the RK GROUP JOINT VENTURE ("Contractor"), together referred to as "the Parties."

RECITALS

- A. City and Contractor are parties to that certain Food and Beverage Service Agreement entered into pursuant to Ordinance 85056 passed and approved on October 24, 1996 and executed by both Parties on March 3, 1997 (the "Agreement").
- B. Prior to the effectiveness of this Amendment, the Agreement, in accordance with Article XLI, provided for a divided commission structure.
- C. City and Contractor desire to amend the Agreement as stated in this Amendment.
- D. All other provisions of the Agreement remain in force.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in the Agreement, the receipt and adequacy of which are hereby acknowledged, City and Contractor hereby agree as follows:

- 1. **Definitions.** All capitalized terms used in this Amendment without definition herein shall have the meanings assigned to such terms in the Agreement.
- 2. **Amendments.** The Agreement is hereby amended as follows:

Article XLI is hereby deleted in its entirety and replaced with the following:

XLI. COMPENSATION TO CITY FOR FOOD AND BEVERAGE SERVICE

40.1 In return for the right to exclusively conduct Food and Beverage Service operations at the Center and Lila Cockrell Theater, including Other Services as

described in this Agreement, Contractor shall pay to City on a monthly basis a commission in the amount of 25% of Gross Receipts for all Food and Beverage Services and Other Services provided at the Center and Lila Cockrell Theater by Contractor.

40.2 It is understood by Contractor that all commissions due to City shall be calculated from the amount actually billed to the Customer of the Center, or, in the event Food and Beverage Services are provided to an organization or group of individuals attending an event of a Customer of the Center at the Center, the amount actually billed to that organization or group of individuals for all events held in the Center or Lila Cockrell Theater where Food and Beverage Services are performed (i.e. Customer is charged all-inclusive price of \$200/person for an event). Commissions are to be calculated before taxes and service charges (gratuities).

40.2.1 Commission waivers, if any are given, must be approved in advance and in writing by the Convention Facilities Director, and a copy of the approval document must be included in Contractors monthly sales report and also kept in Contractor's file.

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

40.3 Contractor agrees that they shall not barter, trade, or discount any and all Food and Beverage Services and/or Other Services provided by Contractor under this Article that are commissionable to City unless prior written approval is received from the Convention Facilities Director.

40.4 It is the responsibility of Contractor to request prior written approval from the Convention Facilities Director for any additional charges to a Customer of the Center including but not limited to convenience charges, surcharges, service charges (non-gratuity), etc. which are assessed any Customers of the Center. An explanation of the additional fees/charges shall accompany the request. It is in the sole discretion of the Convention Facilities Director to approve or deny Contractor's request for additional charges to Customer's of the Center.

40.5 City and Contractor agree that the commission percentages set forth in this Article shall not be applicable to any and all agreements entered into on or after November 1, 2004 with the exception of the San Antonio Breast Cancer Symposium (to be held in December of 2004) which are to be subject to the original commission rates as described in the Initial Term of this Agreement.

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

40.7 The Convention Facilities Director may reduce or waive commissions for Food and Beverage Services and/or Other Services invoiced to the City (1) for City sponsored events that are held at the Center or (2) if it will facilitate the marketing of the Center.

3. **Effective Date.** This Amendment shall be effective November 4, 2004.
4. **No Other Changes.** Except as specifically set forth in Section 2 of this Amendment, all of the terms and conditions of the Agreement shall remain the same and are hereby ratified and confirmed. The Agreement, as amended by this Amendment, shall continue in full force and effect, and the Agreement, as amended by this Amendment, shall be read and construed as one instrument.
5. **Choice of Law.** This Amendment shall be construed in accordance with and governed by the laws of the State of Texas.
6. **Counterparts.** This Amendment may be executed in any number of counterparts, but all such counterparts shall together constitute but one instrument. In making proof of this Amendment it shall not be necessary to produce or account for more than one counterpart signed by each party hereto by and against which enforcement hereof is sought.

IN WITNESS HEREOF, the parties hereto have executed in duplicate originals this Amendment on the _____ day of _____ 2004.

CITY OF SAN ANTONIO
a municipal corporation

RK GROUP JOINT VENTURE
a Texas Joint Venture

J. Rolando Bono
Interim City Manager

Greg Kowalski
President
Catering By Rosemary, Inc.
Managing Joint Venture Partner

Additional signatures appear on following page.

ATTEST:

City Clerk

Rosemary Kowalski
President
Rosemary Kowalski & Associates
Joint Venture Partner

APPROVED AS TO FORM:

Andrew Martin
City Attorney

Richard Ojeda
President
Taco Flats, Inc., d/b/a Black Tie
Affairs Catering, Joint Venture
Partner

Manuel H. Garza, Jr.
President
La Casita Enterprises, Inc., d/b/a
Catering by Nick
Joint Venture Partner

John Lopez
President
John Lopez d/b/a All Star Services,
successor in interest to All Star
Catering, Inc.
Joint Venture Partner

EXHIBIT B

**AMENDMENT AND RESTATEMENT OF THE
HENRY B. GONZÁLEZ CONVENTION CENTER
FOOD AND BEVERAGE SERVICE AND
CONCESSION SERVICES AGREEMENT**

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This Amendment and Restatement of the Henry B. Gonzalez Convention Center Food and Beverage Service and Concession Services Agreement (hereinafter referred to as this "Agreement") is entered into under the Option Term provision, Section 2.2, of the Henry B. Gonzalez Convention Center Food and Beverage Service Agreement, approved and authorized by Ordinance No. 85056, dated October 24, 1996, and is hereby made and entered into by and between the City of San Antonio (hereinafter referred to as "City") a Texas Municipal Corporation acting by and through its Interim City Manager pursuant to Ordinance No. _____, dated November 4, 2004 and the RK Group L.L.C. (hereinafter referred to as "Contractor"), successor to the interest of the RK Group Joint Venture, for exclusive Food and Beverage Services at the City owned Convention Facilities known as the Henry B. Gonzalez Convention Center (hereinafter referred to as "the Center.") and Lila Cockrell Theater and exclusive Concession Services at the Center, Lila Cockrell Theater, and the City's Municipal Auditorium, as stated herein.

I. DEFINITIONS

Agreement – shall mean this Food and Beverage Service and Concession Services Agreement and all addenda attached hereto. This Agreement is for the exclusive rights to all food services inside the Center and Lila Cockrell Theater, Concession rights in the Center, Lila Cockrell Theater, and City's Municipal Auditorium, and non-exclusive rights, as set forth herein, outside of the Center.

Business Day – shall mean Monday through Friday, 7:45 a.m. until 4:30 p.m., excluding Holidays officially recognized by the City Council of the City of San Antonio.

Concessions – shall mean the sale of food and beverages (including alcoholic beverages) from fixed, temporary, or Portable Concession stands, excluding cash-bar sales at events not open to the general public.

Concession Facilities - shall mean those areas of the Henry B. Gonzalez Convention Center, Lila Cockrell Theater, and the City's Municipal Auditorium, where Contractor is authorized to perform Concession Services.

Concession Services – shall mean all concessions provided to Customers of the Center, Licensees and Invitees on the Premises.

Contractor's Employees – shall mean full-time employees of Contractor and/or Contractor's Members, as defined hereafter, who are necessary to perform the duties of Contractor hereunder.

Contractor's Members (Members) – shall mean those parties specifically named as Members of the RK Group L.L.C. under the definition of RK Group LLC, as set forth hereunder, and any assigns as may be approved through an act of the City Council of the City thereafter.

Contractor's Personnel – shall mean and refer to Contractor's Employees and/or employees of Contractor's Members and all part-time and/or temporary event workers at any time used by Contractor in performing its respective duties hereunder.

Convention Facilities Director – shall mean the Director of the City’s Convention Facilities Department whose duties include managing the Center, Lila Cockrell Theater, and the City’s Municipal Auditorium.

County – shall mean the County of Bexar, State of Texas.

Customer of the Center – shall mean a customer who has agreed through a short-term License Agreement or any other written agreement with the City to occupy space at the Center, including the Lila Cockrell Theater.

Food and Beverage Services - shall mean all food and beverage services provided to Customers of the Center on the Premises including but not limited to food service, alcoholic and non-alcoholic beverage service, catering food and beverage services.

Food and Beverage Service and Concession Services Agreement - shall mean this Food and Beverage Service and Concession Services Agreement and all attached addenda. This Agreement is for the exclusive rights to all food services inside the Center and Lila Cockrell Theater, and exclusive concession rights at the Center, Lila Cockrell Theater, and Municipal Auditorium, and non-exclusive rights, as set forth herein, outside of the Center.

Food and Beverage Service and Concession Services Equipment – shall mean all major equipment owned or leased by the City used to provide Food and Beverage Service and Concession Services for Customers of the Center or Licensees of the City as specified in Addendum I to this Agreement (Equipment Schedule) which is incorporated herein by reference and which may be amended from time to time by the Convention Facilities Director with the consent of Contractor, such consent to not be unreasonably withheld, for the purpose of replacement due to obsolescence or if the Convention Facilities Director determines that such equipment is no longer useable.

Food and Beverage Service and Concession Service Facilities – shall mean those areas of the Center, Lila Cockrell Theater, and City’s Municipal Auditorium, that are to be used to conduct Food and Beverage Service and Concession Services as specified in Addendum II to this Agreement (Facility Floor Plans) which is incorporated herein by reference and which may be amended from time to time by City.

Food and Beverage Service and Concession Service(s) – shall mean all Food and Beverage Service and concession services provided to Customers of the Center on the Premises including but not limited to food service, alcoholic and non-alcoholic beverage service, catering food and beverage services, wardrobe checking services, and concessions, including concession sales from fixed and temporary concession facilities located in the currently existing exhibit halls of the Center, future fixed and temporary concession stands in future exhibit halls, the Lila Cockrell Theatre, the City’s Municipal Auditorium and any proposed outlets in the expansion area of the Center for public exhibitions including Plaza Mexico, and all Portable Concessions, including carts, kiosks, or other devices used to sell concession items to Center patrons.

Food and Beverage Service and Concession Service Operation(s) – shall mean all day-to-day operations necessary to provide Food and Beverage Service and Concession Services on the Premises.

Force Majeure – shall mean an act of God, civil riot, flood, fire or other calamity beyond the reasonable control of City or Contractor as to prevent the performance of duties under this Agreement.

General Manager (GM) – shall mean the designated representative of Contractor assigned to manage the Food and Beverage Service and Concession Services at the Center and Lila Cockrell Theater, and Concession Services at the Center, Lila Cockrell Theater, and City's Municipal Auditorium as further described in Article V.

Gross Receipts – shall mean the total amount of gross revenue received by the Contractor from Food and Beverage and Concession Services, Other Services, Rental and other Food and Beverage Services (non-gratuity) charges for all sales, whether collected or not, made as a result of the service rights granted under this Agreement, excluding applicable sales taxes or service charges (gratuities). Receipts are calculated net of any deductions made for a customer of the Center's benefit except written waivers approved by the Convention Facilities Director. In calculating commissions, liquor by drink tax shall not be calculated as a deduction to Gross Receipts.

Indemnatee(s) – shall mean City as an entity and the elected officials, members, agents, employees, officers, directors and representatives of City.

Licensee – shall mean an individual, group or organization who has executed a Short-Term License Agreement with the City to occupy space at the City's Convention Center, Lila Cockrell Theater, and/or the City's Municipal Auditorium.

Novelties – shall mean all event-related novelties and souvenirs, excluding compact discs, provided by a Customer of the Center, Licensee, or promoter for a commercial event held at the Center or Lila Cockrell Theater.

Other Services – shall mean any and all other revenue producing services other than Food and Beverage Service and Concession Services provided to Customers of the Center or Licensees by the Contractor on the Premises now or in the future including but not limited to floral, decorations, rental, and entertainment, but excluding meeting planning services and transportation services to and from the Premises.

Parties – shall mean the City of San Antonio and RK Group L.L.C.

Portable Concessions – shall mean non-fixed concession stands, carts, kiosks or other portable devices that are used to provide Concession Services to patrons, visitors, and Customer's of the Center and City's Licensees on the Premises.

Premises – shall mean all areas associated with the Henry B. Gonzalez Convention Center, Lila Cockrell Theater, and City's Municipal Auditorium, as described further in Addendum II.

RK Group L.L.C. – shall mean a limited liability company comprised of the following members: Catering by Rosemary, Inc.; Taco Flats, Inc., d/b/a Black Tie Affairs Catering; Manuel H. Garza, Jr.'s La Casita Enterprises, Inc. d/b/a Catering by Nick; John Lopez d/b/a All Star Services; Chelsea's Sandwiches of Texas, Inc.; True Flavors, L.L.C.; and JAD Services, Inc. d/b/a Absolutely Everything Catering Services. RK Group LLC is a successor to the interests of the RK Group Joint Venture.

Smallwares – shall mean china, glassware, flatware, kitchen utensils, and banquet serving equipment (chafing dishes, urns, trays, platters, banquet tablecloths, napkins, table skirting, etc.) owned by Contractor or Contractor's Members and used by Contractor to perform services under this Agreement.

Small Business Economic Development Advocacy (SBEDA) Definitions - shall mean those definitions as set forth in Ordinance 96754, adopted by the City of San Antonio on November 21, 2002.

II. TERM OF AGREEMENT

2.1 The Initial Term of this Agreement was for an eight year period beginning February 1, 1997 and ending January 31, 2005 (hereinafter referred to as "Initial Term"). This Agreement has been extended by the City's exercise of its Option Term in accordance with Section 2.2 of the Henry B. Gonzalez Food and Beverage Service Agreement, authorized under Ordinance No. 85056, dated October 24, 1996, and as set forth in Ordinance No. _____, dated November 4, 2004. The Option Term of this Agreement and the terms set forth herein begin on February 1, 2005 and expire on January 31, 2010 (Option Term).

2.2 At the end of the Option Term, Contractor agrees to provide a transition period of termination for a period not to exceed six (6) months at City's request. During this transition period, Contractor shall continue to provide Food, Beverage and Concession Services as provided for under this Agreement. City shall give Contractor one hundred twenty (120) days notice prior to the end of the Option Term of its desire to have Contractor provide a transition period and for what period of time (i.e., 2 months, 4 months, etc.). During the transition period, the terms of this Agreement shall control.

III. SCOPE OF SERVICES

3.1 City hereby grants to Contractor the exclusive right to provide Food and Beverage Services at the Center and Lila Cockrell Theater and exclusive Concession rights, as described in Article XL, at the Center, Lila Cockrell Theater, and the City's Municipal Auditorium, with the exception of those instances where emergency circumstances, inclement weather, or any other circumstances that the Convention Facilities Director and Contractor mutually agree warrants the Convention Facilities Director to permit Customers of the Center or Licensees to provide its own Food and Beverage Service and/or Concession Services on the Premises.

3.1.1 Contractor understands that the following events are exempted from the exclusive nature of this Agreement and that the consent of Contractor to allow other persons or companies to provide Food and Beverage Service and Concession Services at the Center for these events is not required:

- (a) the annual Jimenez Thanksgiving Dinner;
- (b) the HEB Christmas Dinner;
- (c) the Annual Sweetheart Dance;
- (d) Other City-Sponsored Events held in conjunction with the City's Department of Community-Initiatives.

3.1.2 It is agreed that in 3.1.1(a), (b), (c) and (d), Contractor shall not be held responsible for the cleaning of those portions of the Food and Beverage Service and Concession Service Facilities that are being operated by a person or company other than Contractor and shall not be liable for any damage or loss that may occur in connection therewith. Furthermore, in 3.1.1(a), (b), (c) and (d), City shall require any food and beverage provider to list Contractor as an additional insured on such food and beverage service provider's general liability insurance policy for only that period of time that said provider(s) use(s) the Food and Beverage Service and Concession Service Facilities at the Center, Lila Cockrell Theater, and/or the City's Municipal Auditorium, and at the same levels of insurance provided for the benefit of the City.

3.1.3 It is hereby agreed by the Parties that in relation to the events identified in 3.1.1(a), (c) and (d), Contractor shall pay no commission to City on Gross Receipts for Other Services that Contractor may provide on a non-exclusive basis, to Customers of the Center or Licensees on the Premises.

3.1.4 It is hereby agreed by the Parties that in 3.1.1(b), Contractor shall pay a commission, as further described in Articles XXXVIII and XL of this Agreement, to City on Gross Receipts for Other Services that Contractor may provide on a non-exclusive basis at the Center.

3.2 Contractor agrees to provide all services and other activities as specified herein and as are required to perform Food and Beverage Service and Concession Services at the Center, Lila Cockrell Theater, and the City's Municipal Auditorium.

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

3.3.1 The Convention Facilities Director shall notify Contractor of any unacceptable levels of service and undesirable practices and Contractor shall immediately remedy service deficiencies and/or discontinue the undesirable practices promptly.

3.3.2 Contractor shall constantly endeavor to improve the Food and Beverage Service and Concession Services with a view toward developing maximum sales and service and to promote the marketing of the Center to Customers of the Center, potential Customers of the Center, Licensees and their patrons. This shall include payments by Contractor, not to exceed five thousand dollars (\$5,000.00), made available on February 1st of each year of this Agreement to be used by City for direct marketing of the Center. The Convention Facilities Director and Contractor shall jointly agree on how such funds are to be utilized.

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

IV. USE OF FACILITIES AND EQUIPMENT

4.1 Contractor shall use the Food and Beverage Service and Concession Service Facilities and Food and Beverage Service and Concession Service Equipment made available to Contractor under this Agreement solely for the purpose of providing Food and Beverage Service and Concession Services to Customers of the Center and Licensees that are on the Premises as set forth herein, except as authorized in writing by the Convention Facilities Director. The use of the Food and Beverage Service and Concession Service Facilities and the Food and Beverage Service and Concession Service Equipment shall comply with City's standards of quality and service mentioned in this Agreement.

4.2 Any visitors to the Food and Beverage Service and Concession Service Facilities (other than vendors, suppliers, representatives of Customers of the Center, Licensees, invitees or potential Customers of the Center or Licensees) must have permission by the Convention Facilities Director before access will be granted to said facilities.

V. CONTRACTOR EMPLOYEES AND PERSONNEL

5.1 Contractor agrees that it shall not discriminate against any individual or group on account of race, color, sex, age, religion, national origin or disability and shall not engage in employment practices which have the effect of discriminating against Contractor's Personnel or prospective Contractor's Personnel because of race, color, religion, national origin, sex, age or disability. Contractor further agrees that Contractor shall abide by all applicable terms and provisions of City's Non-Discrimination Policy and City's Equal Opportunity/Affirmative Action policy, these policies being available in City's Department of Human Resources and the City Clerk's Office.

5.2 Contractor shall provide the following list of Contractor's Essential Management employees assigned to the Premises, to include their positions and names: General Manager (hereinafter referred to as "GM") responsible for all Food and Beverage Service and Concession Services at the Center, the City's Municipal Auditorium, and Lila Cockrell Theater, Executive Chef, Sous Chef, Catering Sales Managers, Banquet Manager, Executive Kitchen Steward, Beverage Manager, Office Manager, Cash Outlet Manager, and designated Contract Administrator. The list of Essential Employees must be approved by City through its Convention Facilities Director within thirty (30) days of the effective date of this Agreement or any amendments hereto and must be updated upon any and all proposed changes.

5.2.1 The GM must have a minimum of two years of consecutive employment in a similar operation with comparable responsibilities. The GM must have education and/or experience in food and beverage service with particular emphasis upon effective marketing techniques. The GM must have a high degree of management expertise, as evidenced by prior food and beverage service management duties involving convention center food and beverage service operations, high quality food production and service, and effective financial controls. The GM shall coordinate all Food and Beverage Service and Concession Service related access to the Premises (including docks, pantries, kitchens, or any other entry), with subcontractors, vendors, and/or Contractor's Personnel.

5.2.2 The GM shall be responsible for all Food and Beverage Service and Concession Services provided by the Contractor and shall seek to avoid any disruption in service to Customers of the Center or Licensees.

5.2.3 Contractor shall ensure that the GM or a qualified replacement shall be on the Premises during all operating hours. A "qualified replacement" is defined as an individual with substantially similar education and experience as the GM.

5.3 Contractor shall recruit, train, supervise, direct, discipline, and, if necessary, discharge any and all Contractor's Personnel working on the Premises. All Contractor's Personnel shall be personnel of Contractor and not of the City. Contractor shall screen all applicants and perform a criminal background check on applicants considered for employment to ensure that Contractor's Personnel do not pose a security or health risk.

5.4 Contractor shall document that all persons hired by Contractor, Contractor's Members, and subcontractors to perform under this Agreement are citizens of the United States or legal immigrants with proper work permit(s) or other appropriate documentation authorizing employment of a non-United States citizen to work in the United States. Furthermore, Contractor agrees that all Contractor's Personnel who work with the public shall be able to communicate in English. Contractor shall have documentation of employment authorization for all Contractor's Personnel under this Agreement available at all times.

5.5 A copy of Contractor's "Personnel Policy" shall be submitted by Contractor within thirty (30) days of the effective date of this Agreement, which shall require all Contractor's Personnel

under this Agreement to comply with all instructions, regulations and codes of conduct as specified by the Personnel Policy and any additional policies promulgated from time to time by the Convention Facilities Director, which will be provided on an ongoing basis. All temporary agencies who provide personnel to Contractor (personnel not employed, but used by Contractor) shall be provided with a copy of Contractor's Personnel Policy as it relates to instructions, regulations, policies and codes of conduct of Contractor Personnel within the Premises. The temporary agencies shall be instructed to educate any such personnel as to the applicable instructions, regulations, policies and code of conduct.

5.6 Contractor shall require all Contractor's Personnel under this Agreement to meet the appropriate health standards prescribed by local, state, and federal laws and regulations.

5.7 Contractor's Personnel must be appropriately uniformed when performing their work assignments on the Premises as set forth in Contractor's Personnel Policy. Contractor shall obtain the approval of the Convention Facilities Director on standard uniforms (non-costumed) to be worn by Contractor's Personnel when performing under this Agreement. All costumes (non-standard) worn by Contractor's Personnel shall be in good taste and shall not be lewd, obscene or vulgar. The term "appropriately uniformed" is defined as all apparel, visible badges, hats, hair nets, etc.

5.8 Contractor's Personnel shall be adequately trained to maintain the high quality of Food and Beverage Service and Concession Service as required by City. Contractor shall ensure such training through employee orientation, training, and continuing training programs. Contractor shall also ensure that only trained staff shall substitute for regular employees during their absence. Contractor shall furnish names to the Convention Facilities Director of such substitute management employees identified in 5.1 above to be used on the Premises. Should Contractor's Personnel assigned to handle the City's account be unable to perform in a satisfactory manner, replacement of such personnel by Contractor shall be required within a reasonable period of time.

5.9 Contractor shall ensure that its cash handling Personnel are insured or bonded for a minimum of \$15,000.00. Contractor shall provide proof of such insurance or bond to the Convention Facilities Director. In addition, Contractor, within thirty (30) days of the effective date of this Agreement, will provide a copy of its internal control procedures implemented to protect the City from financial loss resulting from any aspect of administering this Agreement.

5.10 Contractor shall notify City in writing within five (5) Business Days of knowledge of any anticipated labor, personnel, or vendor problems or any other circumstances that could adversely affect Contractor's performance under this Agreement.

5.10.1 Subject to a Force Majeure event as defined in this Agreement, Contractor agrees to provide undisturbed Food and Beverage Service and Concession Services under this Agreement in the event of strikes and other labor disturbances to the extent allowed by law.

5.11 City, through its Convention Facilities Director, shall have the right, at any time, to have Contractor remove Contractor Personnel from direct service under this Agreement. After invoking such right, Contractor must immediately remove identified personnel from the Premises and replace said personnel within a reasonable time.

VI. PLACES ON THE PREMISES ASSIGNED TO CONTRACTOR

6.1 City shall provide Contractor access to and control over the Food and Beverage Service and Concession Service Facilities, as described in Addendum II, throughout the term of this Agreement, with the exception of the events stated in Section 3.1.1 of this Agreement. City may inspect the Food and Beverage Service and Concession Service Facilities whenever, in its sole discretion, it deems appropriate. The descriptions in Addendum II may be amended from time to time by the mutual agreement of the Convention Facilities Director and Contractor evidenced by a written instrument executed by both Parties.

6.2 City shall not be responsible under any circumstances for loss or damage to Contractor's supplies, materials, or equipment at the Food and Beverage Service and Concession Service Facilities, or to any improvements made to the Food and Beverage Service and Concession Service Facilities by Contractor, or to any personal belongings of Contractor or Contractor's Personnel brought onto the Premises unless such loss or damage is directly caused by City, its officers, agencies, employees, officials or contractors.

VII. INSURANCE

7.1 Prior to the commencement of any work under this Agreement, Contractor shall furnish a completed Certificate of Insurance to the Convention Facilities Director in the name of Contractor and of each of Contractor's Members and of any of Contractor's subcontractors providing services herein which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverages, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. City shall have no duty to pay or perform under the Agreement until such certificate has been delivered to the Convention Facilities Director, and no officer or employee shall have authority to waive this requirement.

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

7.3 Contractor's financial integrity is of interest to City, therefore, subject to Contractor's right to maintain reasonable deductibles in such amounts as are approved by City, Contractor shall obtain and maintain in full force and effect for the duration of the Agreement, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis by companies authorized and admitted to do business in the State of Texas and rated A+15 or better by A.M. Best Company and/or otherwise acceptable to City, in the following types and amounts.

<u>TYPE</u>	<u>AMOUNT</u>
a) Workers' Compensation Employers Liability	Statutory \$1,000,000/\$1,000,000/\$1,000,000
b) Commercial General (Public Liability Insurance to include coverage for the Following:	
1. Premises/operations	Combined Single Limit
2. Independent contractors	for Bodily Injury and
3. Products/completed operations	Property Damage of
4. Personal Injury	\$1,000,000 per occurrence
5. Contractual Liability	with an aggregate of not less than
6. Liquor Liability	\$2,000,000, or its equivalent
7. Broad form Property Damage including Fire Legal Liability	
c) Builder's Risk Insurance (future capital improvements) (Contractor shall obtain Builder's Risk Insurance only if Contractor does any construction to the Food and Beverage Service Facilities).	
d) Commercial Crime/Fidelity Insurance	\$50,000.00 per occurrence

7.4 Contractor hereby agrees to require that all vehicles used in performance of its obligations under this agreement shall be insured at the following amounts:

1. Owned/leased vehicles	Combined Single Limit for Bodily
2. Non-owned vehicles	Injury and Property Damage of
3. Hired vehicles	\$1,000,000 per occurrence or its equivalent.

7.5 City shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by City, and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by City, Contractor shall exercise reasonable efforts to accomplish such changes in policy coverages and shall pay the cost thereof.

7.6 Contractor agrees that with respect to the above required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name, City and its officers, employees, and elected representatives as additional insureds as respect operations and activities of, or on behalf of the named insured

performed under contract with City with the exception of the workers' compensation and employers' liability policy.

- Provide for an endorsement that the "other insurance" clause shall not apply to the City of San Antonio where City is an additional insured shown on the policy; and
- Workers' compensation and employer's liability policy will provide a waiver of subrogation in favor of City.

7.7 Contractor shall notify City in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices to City not less than thirty (30) days prior to the change, or ten (10) days notice for cancellation due to nonpayment of premiums, which notice must be accompanied to City by replacement Certificate of Insurance. All notices shall be given to City at the following address:

City of San Antonio
Convention Facilities Director
P.O. Box 1809
San Antonio, Texas 78296

7.8 The obligations of Contractor hereunder to provide such insurance coverage may be satisfied by the provision of evidence of insurance in conformity herewith by each member of Contractor and any subcontractor to Contractor providing services herein.

7.9 City shall at all times maintain, with respect to the Premises, for the term of this Agreement (including any extension hereof), a property insurance policy or policies providing coverage from loss due to fire, losses covered by "extended coverage," vandalism and malicious mischief, in such amounts, upon such terms and subject to such deductibles customarily carried by City with respect to other facilities owned by City, with either casualty insurance or self-insurance, at City's sole discretion.

VIII. INDEMNIFICATION

8.1 Claims Based Upon the Acts of Omission of Contractor. CONTRACTOR CONVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS CITY AND THE ELECTED OFFICIALS, MEMBERS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, (individually and collectively referred to herein as "Indemnitees"), from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature (collectively herein referred to as "Claims"), made upon Indemnitees directly or indirectly arising out of, resulting from or related to any personal injury or death and property damage which happens, or is alleged to have happened, in or about the place where such work is being performed (a) while the Contractor is performing its work, or (b) while any of the Contractor's personnel, Contractor's and/or its Contractor's Members property, or Contractor's and/or its Contractor's Members equipment are in or about such place by reason of or as a result of the performance of the Contractor's work, where such

Claims are based upon the acts or omissions of Contractor, any agent, officer, director, representative, employees, officers, agents, personnel, directors and representatives, ALL WITHOUT, HOWEVER WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights contractual or otherwise, to any other person or entity. Contractor shall promptly advise City in writing of any claim or demand against indemnitees or Character known to Contractor and shall see to the investigation of and defense of such claims or demand at Contractor's cost.

8.2 Claims **Based Upon the Act or Omission of Indemnitees**. In addition to the foregoing, CONTRACTOR CONVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS Indemnitees from and against any and all Claims MADE UPON INDEMNITEES DIRECTLY OR INDIRECTLY arising out of, resulting from or related to any bodily injury or death and property damage which happens, or is alleged to have happened, in or about the place where such work is being performed (a) while the Contractor is performing its work, or (b) while any of the Contractor's personnel, Contractor's and/or its Contractor's Members equipment are in or about such place by reason of or as a result of the performance of Contractor's work, WHERE SUCH CLAIMS ARE A RESULT OF THE ACTS OR OMISSIONS OF INDEMNITEES, INCLUDING WITHOUT LIMITATION, INDEMNITEES' OWN NEGLIGENCE provided however, that the sum of all payments required of CONTRACTOR hereunder in connection with Claims caused by the act or omission of Indemnitee shall not exceed the contractual liability coverage provided by Contractor's Commercial Liability Policy required under the terms of this Agreement. The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights contractual or otherwise, to any person or entity. Contractor shall promptly advise City in writing of any claim or demand against Indemnitees or Contractor known to Contractor and shall see to the investigation and defense of such claim or demand at Contractor's cost.

8.3 **Agreement to Defend**. CONTRACTOR FURTHER AGREES TO DEFEND AT ITS OWN EXPENSE, and ON BEHALF OF CITY AND IN THE NAME OF CITY, any claim or litigation brought against the Indemnitees in connection with any such personal injury, death or property damage to which the INDEMNITY applies as set forth in this Article in connection with any defense of City required hereunder, CONTRACTOR shall be obligated to pay all reasonable attorneys fees and necessary litigation expenses. City shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this Article. Contractor shall promptly advise City in writing of any claim or demand against Indemnitees or Contractor known to Contractor.

IX. PROCUREMENT

9.1 Contractor shall procure all food, beverage, concession, and cleaning supplies necessary to perform the duties under this Agreement. Contractor shall take advantage of any and all trade, cash, and quantity discounts available to Contractor to be able to maintain the lowest possible prices in the Food and Beverage Service and Concession Service operations, taking into

consideration Contractor's obligations regarding quality and compliance with the City's SBEDA Program under this Agreement.

9.2 Contractor shall engage in competitive specification buying. However, food or supplies may be procured by Contractor from a facility operated by Contractor or one of Contractor's Members provided that such food and supplies are acceptable to the Convention Facilities Director with respect to quality and competitive prices.

9.2.1 To encourage the participation of small and local businesses in the procurement of goods, Contractor agrees to participate in an annual Vendor Fair in coordination with the City of San Antonio Economic Development Department.

9.3 Contractor hereby agrees that all food, drinks, beverages, confectionery refreshments or other refreshments which are sold or kept for sale pursuant to this Agreement shall be first quality, wholesome and pure and shall conform in all respects to the federal, state and local food and other laws, ordinances and regulations. Contractor further agrees that no imitation, adulterated or misbranded articles shall be used in the performance of obligations under this Agreement. Contractor agrees that all merchandise shall be kept on hand, stored and handled with due regard for sanitation and that no leftover perishable merchandise shall be sold or served at any time. Contractor must comply with the minimum purchase specifications, as listed below. Contractor's own purchasing specifications must equal or exceed these minimums:

- a) All meats, meat products, poultry, poultry products, and fish must be Government inspected
- b) Beef, lamb, and veal shall be USDA Grade Choice or better
- c) Pork shall be U.S. No. "1"
- d) Poultry shall be U.S. Government Grade "A"
- e) Fresh fish and seafood shall be top grade, frozen fish and seafood shall be a nationally distributed brand, packed under continuous inspection by the USDA
- f) Dairy products: Eggs – fresh USDA or state graded "A"
Butter – USDA Grade "A" (92) score
Cheese – USDA Grade "A" for all graded cheese
Milk and milk products – USDA Grade "A"
- g) Fresh fruit and vegetables – USDA fancy to USDA Number "A" shall be used for all graded fresh vegetables and fruit as a minimum specification
- h) Dry stored items and canned goods – Grade "A" fancy
- i) Frozen fruits and vegetables – USDA Grade "A"

X. SANITATION AND SAFETY

10.1 Contractor shall maintain the Food and Beverage Service and Concession Service Facilities in a clean and sanitary manner at all times and operate under the highest industry standards for sanitation and safety.

10.1.1 Contractor is responsible for the cleaning of the Food and Beverage Service and Concession Service Facilities as described in Addendum III of this Agreement throughout the term of this Agreement at Contractor's sole expense, provided, however, that City shall bear that portion of the costs in excess of Contractor's ordinary operational costs which are caused by defects in the installation or engineering of the structural systems of the Food and Beverage Service and Concession Service Facilities, subject to defects occurring prior to Contractor incurring such excess costs.

10.2 Contractor shall comply with all laws, rules, regulations and orders of the Federal Government, the State of Texas, the County of Bexar, and the ordinances, resolutions, safety and health codes of the City of San Antonio which would affect Contractor's compliance with the terms of this Agreement. Contractor shall immediately notify City, in writing, of any potential violations.

10.3 Contractor shall train all of Contractors' Employees to follow a "clean-as-you-go" policy, as described in Addendum III.

10.4 The Food and Beverage Service and Concession Service Facilities are subject to inspection by state, city, and county authorized health department officials, fire department, and other agencies relative to safety requirements.

10.4.1 Contractor shall immediately notify Convention Facilities Director, in writing, of any notices of violations which are received during or in connection with inspections performed under 10.4. A copy of any such report received by Contractor shall be immediately sent to the Convention Facilities Director. Contractor shall include action plans to correct conditions causing the violations.

10.4.2 City shall have the option to be present at all inspections and shall be given prior notice of inspections whenever possible within two (2) Business Days of inspection date.

10.5 If Contractor becomes aware of any condition in the Food and Beverage Service and Concession Service Facilities that is unsafe or unhealthy, Contractor shall immediately notify the Convention Facilities Director in writing.

10.6 City shall be notified by Contractor immediately in writing of any accident or safety hazard that occurs on the Premises and is known to Contractor. Contractor shall also advise City, in writing, of whatever action Contractor has taken to remedy any safety hazard. Contractor, Contractor's Personnel, Contractor's Employees, Contractor's agents or subcontractors agree to abide by and practice all state and local safety standards and regulations. Contractor shall take all reasonably necessary and proper precautions to protect the safety of Contractor's Personnel,

Contractor's Employees and other persons and to protect all property from any damages from whatever cause.

10.7 Contractor and any of its subcontractors shall provide access to the authorized representatives of the Secretary of Labor for the purpose of inspecting or carrying out any of the Secretary's duties under the Occupational Safety and Health Act (hereinafter referred to as "the Act") of 1980, as amended. Contractor shall be responsible for any violation of the Act or any regulation issued hereunder related to Contractor's activities under this Agreement and shall immediately remedy any conditions giving rise to such a violation. Contractor shall give City prompt written notice of any such violation. **CONTRACTOR SHALL DEFEND AND HOLD HARMLESS CITY FROM ANY FINE, PENALTY, OR LIABILITY IN CONNECTION WITH ANY VIOLATION OF THE OCCUPATIONAL SAFETY AND HEALTH ACT UNLESS SUCH FINE, PENALTY, OR LIABILITY SHALL ARISE FROM THE EXISTENCE OF A PREMISES DEFECT OVER WHICH CONTRACTOR HAS NO CONTROL OR DUTY UNDER THIS AGREEMENT**

10.8 Contractor shall at its expense, obtain monthly extermination services in the Food and Beverage Service and Concession Service Facilities. Places on the Premises requiring extermination by Contractor are indicated in Addendum II.

10.9 Unless otherwise directed by the City, Contractor shall implement a Recycling Program upon the effective date of this Agreement and Contractor shall continue said program throughout the term of this Agreement. A copy of Contractor's Recycling Program shall be provided to the Convention Facilities Director for approval within 30 days after the effective date of this Agreement.

XI. MENU

11.1 Contractor shall provide a variety of high quality and nutritious food. The following parameters shall be observed by Contractor in regard to the menus developed for the Center and Lila Cockrell Theater:

- a) Develop innovative menus which emphasize variety, nutrition, quality, and use fresh foods and seasonal foods whenever possible.
- b) Utilize creative food displays and merchandising techniques to ensure customer satisfaction.
- c) Provide healthful menu choices that include and identify foods that are low in calories, sodium, fats and other information that would satisfy special needs customers.
- d) Be able to produce the menu using the appropriate staffing plans with the Food and Beverage Service Equipment available on the Premises.

11.1.1 All printed menus must be approved by the Convention Facilities Director and Contractor agrees to provide menus to City for promotional purposes.

XII. PORTIONS/PRICING/PRODUCT LISTS

12.1 Contractor shall submit for approval the proposed pricing and portion sizes of all items available for sale in the Center, Lila Cockrell Theater, and the City's Municipal Auditorium to the Convention Facilities Director. Contractor shall coordinate with the Convention Facilities Director to establish and control pricing and portion sizes of all items available for sale on the Premises.

12.2 Contractor shall ensure City that its prices are competitive with similar facilities.

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

12.3 Price adjustments needed for routine negotiations are to be approved with the Convention Facilities Director and reviewed annually. Contractor may submit a scale of adjustments to the Convention Facilities Director for prior approval.

XIII. FIRE AND OTHER EMERGENCIES

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

13.2 Contractor shall give City prompt notice followed by formal written notice of any fire damage occurring to the Premises and a copy of all notices received by Contractor of any claim for bodily injury occurring on the Premises.

XIV. SECURITY

14.1 Contractor shall submit a Security Policy within thirty (30) days of the effective date of this Agreement or any amendments hereto for approval by the Convention Facilities Director. Said policy shall require all Contractor's Personnel to comply with all instructions, regulations, rules and codes of conduct as specified by the Convention Facilities Director which will be provided on an ongoing basis. Contractor shall require all such personnel to utilize approved entrances and exits designated by the Convention Facilities Director or his/her designee. Contractor shall furnish City with a list of the names of Contractor's Personnel and Contractor's Employees and provide updates to said list of names to the Convention Facilities Director monthly as changes occur.

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

14.3 Contractor shall be responsible for turning off all appropriate equipment and lights and locking all appropriate doors at the close of Food and Beverage Service and Concession Service operations within the Food and Beverage Service and Concession Service Facilities.

XV. RECORDS, BOOKS, AUDITS

15.1 Contractor shall provide to the Convention Facilities Director all reports relating to the performance of services under this Agreement requested by City including, but not limited to, reviewed financial statements and reports, reports and accounting of services rendered, and any such reports or related documents requested by City. Contractor shall provide financial and service reports in a reasonable time frame as determined by City. Contractor shall also provide any other reports or documents to City within five (5) Business Days after Contractor receives City's written requests, unless the parties agree in writing on a longer period of time. Sales expense (Food and Beverage Service, labor, supplies, and operating expenses) records and any other documents relating to the performance of services under the terms of this Agreement shall be retained by Contractor for a period of three (3) years after the termination of the Initial Term of this Agreement and any applicable Option Term, in order to be available for audit by City or its designee.

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

15.1.2 Reports shall be completed and submitted in accordance with the Comprehensive Report Schedule (Addendum IV).

15.2 Periodical audits, described further in 15.2.1 and 15.2.3, will be required during the terms of this Agreement.

15.2.1 City's Audit: City or its authorized representative shall at all reasonable times without prior notice have the right to examine, inspect, and audit all books, papers, and bank records of Contractor as necessary to determine the accuracy of reports relative to the Gross Receipts of Contractor's operations under this Agreement. The cost and expenses incurred by City incident thereto shall be the

sole responsibility of and borne by City. Such records shall without limitation include the records of all daily receipts and deposits, and all books, accounts, memoranda, and all or any other documents of Contractor and/or any of Contractor's Members and subcontractors performing under this Agreement indicating and substantiating the amount of any expenditures and receipts related to the foregoing: All deposit slips, bills, vouchers, payroll records, purchase orders, and other pertinent records that, under recognized accounting and industry practices, contain information bearing upon or relating to cost, income, gross sales, or subsidy. Such records shall be maintained by Contractor for a period of three (3) years after the termination of the Initial Term of this Agreement and any applicable Option Term and shall be made available for inspection and/or audit by City or its agents on the Premises or at Contractor's facility.

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

15.2.3 Contractor's Audit: In addition to the Report of Agreed Upon Procedures, City may require Contractor to perform an audit by an independent auditing firm approved by City no more than two (2) times during the term of this Agreement. The cost of the audits will be shared equally by City and Contractor unless the Auditor finds that the Contractor underpaid the City by more than a two percent (2%) variance from what sums were paid to the City by Contractor had previously reported to the City, in which case Contractor will pay for all costs associated with the Audit. A copy of all Audit Reports and Management Letters prepared as a result of such audit shall be provided to City. If such audit reveals an error in the calculation of the payments made by Contractor to City under this Agreement, then the auditors report shall be furnished to both Contractor and City within thirty (30) days of the conclusion of the Audit. If a corrected payment required by the auditors report is due City, Contractor shall pay City the amount due within fifteen (15) Business Days of Contractor's receipt of such report together with interest at the rate of eighteen percent (18%) per annum on commissions due on unreported Gross Receipts but in no event greater than the maximum legal rate allowed under applicable law. If the auditor's report indicates a refund is due Contractor, Contractor shall notify City in writing and include a copy of the auditor's report within thirty (30) days. City shall pay Contractor the amount due

within thirty (30) days of City's receipt of such report but it is expressly agreed that City shall pay no interest on such refund.

15.3 Either Contractor or City may dispute the findings of audits performed under 15.2.1 or 15.2.3 within thirty (30) days of receiving the results of said audit. The Party electing to dispute the audit results shall within thirty (30) days following receipt of the auditors report submit such additional information as may be required to correct the auditors report. If upon examination of additional information by the designated auditor:

- a) such report reflects that a refund is owed to Contractor, then City shall refund such monies to Contractor within thirty (30) days thereafter; or
- b) such report reflects that monies are owed to City by Contractor from unreported Gross Receipts, then Contractor shall pay such monies to City, together with interest at the rate of eighteen (18%) per annum from the date when said payment should have been made, within thirty (30) days thereafter.

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

15.5 Contractor shall take all precautions to ensure that all cash income received from any source and non-cash vouchers are immediately recorded and that designated reports are submitted as required under this Agreement. Contractor shall ensure that all expenditures are supported by appropriate vendor invoices. Contractor shall pay all proper bills and other expenses (other than those paid for by City) incurred in the normal course of providing Food and Beverage Service and Concession Services at the Premises.

15.6 Contractor shall also be subject to periodic, unannounced operating audits of the Food and Beverage Service and Concession Service Facilities by the Convention Facilities Director, his/her staff, and/or their designee. Such audits may include, but not be limited to, a comprehensive review of:

- a) Service quality, attentiveness, courteousness, etc.
- b) Food quality, presentation, and merchandising
- c) Sanitation practices and conditions
- d) Personnel appearance
- e) Training program techniques, schedules, and records
- f) Safety conditions
- g) Operational performance from a financial perspective
- h) Other related operational conditions and/or practices

After the completion of such operating audit, Contractor shall be notified by the Convention Facilities Director of conditions needing correction or improvement. Contractor shall promptly comply with any such notice.

XVI. GRAPHICS

16.1 Contractor and Contractor's Members shall not display any identifying logos and/or graphics within the Food and Beverage Service and Concession Service Facilities except (a) as may be on its employee identification badges or uniforms or (b) as may be utilized in connection with the concession stands, carts, kiosks or other Portable Concessions or (c) as may be affixed to equipment, smallwares or other products identifying the manufacturer of the product used by Contractor or (d) as may be requested by a Customer of the Center. Signs and other graphic materials that are used by Contractor shall be conservative and must be approved in advance by Convention Facilities Director or his/her designee. Contractor shall not place signage printed with commercial brand name identification on the Premises or use such signage when providing Food and Beverage Service and Concession Services to Customers of the Center or Licensees except as otherwise provided in this Section.

16.2 Any use of logos and/or graphics of companies other than Contractor or Contractor's Members in connection with the performance of this Agreement and not allowed by 16.1 is strictly prohibited.

XVII. LABOR RELATIONS

17.1 Contractor and Contractor's Members shall be responsible for their own labor relations with any trade or union represented among Contractor's Personnel and Contractor's Employees and shall negotiate and be responsible for adjusting all disputes described above between itself and Contractor's Personnel, Contractor's Employees, or any union representing such employees. Contractor shall ensure that in any agreement that Contractor has with any of its subcontractors that there be a similar provision whereby the subcontractors will indemnify and hold City harmless for any damages or losses including attorney's fees resulting from labor relation disputes.

XVIII. ASSIGNMENT OF RESPONSIBILITIES, SUBCONTRACTING AND CHANGE OF OWNERSHIP

18.1 Contractor shall not assign, transfer, convey, or otherwise dispose of any part of, or all of its right, title or interest in the Food and Beverage Service and Concession Services referred to herein, nor shall Contractor assign, transfer, convey or dispose of any agreement made with City covering the subject matter of such Food and Beverage Service and Concession Services without first obtaining the written consent of City. This clause shall not prohibit Contractor from subcontracting for specific Food and Beverage Service and Concession Services and/or Other Services where Contractor retains full responsibility for acts of the subcontractor and such subcontracting is approved in writing by the Convention Facilities Director prior to the event.

18.2 Should Contractor assign, transfer, convey, or otherwise dispose or attempt to dispose of its right, title or interest in the Food and Beverage Service and Concession Services herein or any agreement made with City covering the subject matter of such Food and Beverage Service and Concession Services, City may, at its option and through an action of its City Council, cancel

this Agreement, and all rights, titles and interests of Contractor shall thereupon cease and terminate, notwithstanding any other remedy available to City under this Agreement or by law. The violation of this provision by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release said Contractor from the payment of any damages to City which City sustains as a result of such violation.

18.3 Contractor agrees to notify the Convention Facilities Director of any changes of ownership interest or control of its business entity as described in Addendum V not less than thirty (30) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to City under this Agreement, any change of ownership interest or control of its business entity may be grounds for termination of this Agreement at the sole discretion of City.

18.4 Contractor understands and agrees that if it fails to continue operating as RK Group L.L.C. or it fails to maintain the percentage of ownership described in Addendum V, at any time during this Agreement, then Contractor may be declared in default by an action of the City Council of the City of San Antonio and City shall have the rights set forth in Article XXXIV of this Agreement.

18.5 Subcontracting opportunities related to the performance of Food and Beverage Service and Concession Services by third parties (other than Contractor's Members) will require prior written approval of the Convention Facilities Director.

18.6 The violation of any of the provisions under this Article by Contractor shall in no event release Contractor from any obligation under the terms of this Agreement, nor shall it relieve or release said Contractor from the payment of any damages to City which City sustains as a result of such violation.

XIX. COMPLIANCE WITH LAWS AND REGULATIONS

19.1 In performing Food and Beverage Service and Concession Services and/or Other Services on the Premises, Contractor shall, at all times, comply with all laws, rules and regulations and orders of the Federal Government including, but not limited to, the Americans with Disabilities Act, the State of Texas, the County of Bexar, and the ordinances, resolutions, safety and health codes of the City of San Antonio that directly pertain to the services provided by Contractor herein.

XX. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY PROGRAM

20.1 Contractor is hereby advised that it is the policy of the City of San Antonio that Small, Minority and Woman-Owned Business Enterprises have the maximum practical opportunity to participate in the performance of public contracts. Contractor agrees that it shall submit, not less than quarterly a Good Faith Effort Plan (GFEP) to the City's Economic Development Department with a copy to the Convention Facilities Director indicating its subcontracting plan utilization levels starting February 1, 2005.

20.2 Contractor agrees that if material deficiencies exist in the utilization levels outlined in 20.4 below, in the reporting requirements of this Article, or in any aspect of its Small, Minority and Woman-Owned Business Enterprise subcontracting plan, Contractor will notify City through its Convention Facilities Director and Economic Development Department in writing of such deficiency and submit for approval a Supplemental Good Faith Effort Plan (SGFEP) to City's Economic Development Department outlining the deficiency and the corrective measures to be implemented in order to meet the utilization level or reporting requirements of this Article within a thirty (30) day period. If Contractor's SGFEP is not approved by the City's Economic Development Department, such disapproval will constitute a failure to resolve the deficiencies by Contractor. Notwithstanding any provision herein to the contrary, failure to obtain an approved SGFEP within ninety (90) days of initial denial shall constitute a default and result in a penalty on Contractor of \$1,000 per day as liquidated damages for the default until all deficiencies are resolved. Failure to cure all deficiencies within another ninety (90) days of the date the penalty is initially assessed constitutes a further (additional) condition of default by Contractor and which can, at the option of the City, result in forfeiture of the entirety of this Agreement.

20.3 Contractor shall submit a quarterly report to the Convention Facilities Director and City's Economic Development Department outlining the participation levels of the Contractor's Members in connection with the Contractor's activities under this Agreement.

20.4 During the term of this Agreement, Contractor agrees to the following utilization levels, to be averaged over a one year period beginning on February 1, 2005, for the Food and Beverage Service and Concession Services in the Center, Lila Cockrell Theater, and the City's Municipal Auditorium:

Food and Beverage Service and Concession Services

Minority Business Enterprise	31%
Women-Owned Business Enterprise	5%
African-American Owned Business Enterprise	5%
Small Business Enterprise or Local Business Enterprise	50%

The utilization level for Minority Business Enterprises shall be thirty-one percent (31%) collectively for all Food and Beverage Service and Concession Services, subject to the provisions of 20.5.1.

Procurement

Minority Business Enterprise	15%
Women-Owned Business Enterprise	10%
African-American Owned Business Enterprise	3%
Small Business Enterprise or Local Business Enterprise	50%

Utilization level achievement in Procurement will be based on a plus or minus two and one-half percent (2.5%) variance based upon a margin of business availability (except in AABE category

which shall not be less than 2.2%). The utilization levels will be based upon the Gross Receipts received by Contractor.

20.5 As set forth in Section 3.3 of this Agreement, the City places a premium on customer service. In order to provide the highest quality of customer service and the maximum amount of minority business participation, the parties hereto agree to a training period of ninety (90) days following the effective date of this Agreement, for the Contractor (through its Members) to grow operations through offsite training and onsite experiences at the Center, Lila Cockrell Theater, and the City's Municipal Auditorium.

20.5.1 Notwithstanding anything contained in Article XX to the contrary, City agrees that Contractor shall have a period of one (1) year from the initiation of the Option Term ("Ramp-Up Period") within which to achieve the utilization levels outlined in 20.4 above. If, following the Ramp-Up Period, the City's Economic Development Department finds, as a result of an investigation, that the utilization levels outlined in 20.4 is not met, it shall give written notice to Contractor of such deficiency. Upon receipt of such notice, Contractor shall have one hundred and eighty days (180) days within which to meet the utilization levels set forth in 20.4 above. If Contractor fails to meet the utilization levels after one hundred and eighty (180) days, then Contractor shall be subject to the provisions of 20.2 above relating to default.

20.6 During the Ramp-Up Period as described in Section 20.5.1, the utilization levels for Minority Business Enterprises shall not be less than a fifty percent (50%) increase over the actual utilization levels for the Minority Business Enterprises for the year covering February 1, 2003 through January 31, 2004.

XXI. LICENSES AND PERMITS

21.1 Contractor, Contractor's Members, and any subcontractor involved in the Food and Beverage Service and Concession Service operations, shall, at its own expense and cost, procure and keep in force during the term of this Agreement, all permits and licenses required by law to conduct Food and Beverage Service and Concession Services at the Center, Lila Cockrell Theater, and City's Municipal Auditorium, and provide copies of such permits and licenses to City within ten (10) Business Days of receipt.

21.2 It is understood that this Agreement is conditioned upon acquisition and maintenance of valid licenses to sell beer, wine, and liquor by Contractor, Contractor's Members and each subcontractor providing alcoholic beverages in connection with Food and Beverage Service and Concession Services.

21.3 Nothing contained herein shall be construed as binding the City to the issuance of any license or permit needed by Contractor, Contractor's Members or any subcontractor to enable anyone to provide Food and Beverage Service and Concession Services hereunder.

21.4 In the event of termination or expiration of this Agreement by either Party, and upon expiration hereof, it is mutually understood and specifically agreed that any and all permits or

licenses issued by City for Food and Beverage Service and Concession Service operations at the Center, Lila Cockrell Theater, and/or City's Municipal Auditorium shall be canceled without further notice or hearing.

XXII. CONTRACT ADMINISTRATION

22.1 City hereby engages Contractor to operate the Food and Beverage Service and Concession Services as specified herein. Contractor's GM shall cooperate on the Premises with the Convention Facilities Director or his/her designee. The Convention Facilities Director may be changed at the option of City by written notice to Contractor without a formal amendment. All Food and Beverage Service and Concession Services rendered under this Agreement are subject to the final approval of the Convention Facilities Director or his/her designee.

XXIII. RENOVATIONS

23.1 If the City determines that planned major renovations or remodeling are necessary to increase Food and Beverage Service and/or concession opportunities at the Center, Lila Cockrell Theater, and/or City's Municipal Auditorium, City will notify and seek the concurrence of Contractor to such renovations or remodeling plans prior to implementing such renovations or remodeling. Contractor expressly agrees that it will not unreasonably withhold consent to the City's plan to renovate or remodel the Center, Lila Cockrell Theater, and/or City's Municipal Auditorium.

XXIV. EQUIPMENT

24.1 City shall provide, install, and permit Contractor to use the major Food and Beverage Service and Concession Service Equipment as specified in Addendum I. If it is determined by Contractor that such equipment is no longer needed for Food and Beverage Service and Concession Service operations, Contractor will notify City, and with City's consent, not to be unreasonably withheld, Contractor may direct City to remove such equipment. Ownership of all equipment provided by City under this Agreement shall be vested in City with the exception of any equipment provided by Contractor and brought on-site by Contractor with City's approval, for which all costs have been borne by Contractor, with the exception of any equipment leased by City. On or before January 31 of each calendar year commencing January 31, 2006, Contractor shall provide a list of all Contractor-owned and leased equipment brought on site to the Convention Facilities Director. Contractor shall replace equipment, which it has provided, as City deems necessary.

24.2 Contractor, through its Contractor Members and subcontractors, shall provide an initial complement of smallwares of sufficient quantity and quality to conduct Food and Beverage Service and Concession Service operations in a first-class manner and be responsible for all necessary replacement of such smallwares. Title to all such smallwares shall rest solely with Contractor.

24.3 Food and Beverage Service and Concession Service Equipment initially furnished by City is set forth in Addendum I. Subsequent changes, additions, or deletions to Addendum I shall be in

writing and approved by both City and Contractor. On the annual anniversary date of this Agreement and upon termination or expiration of this Agreement, a joint inventory shall be taken by City and Contractor to verify the correctness of the equipment listed in Addendum I. If any equipment is unaccounted for after such inventory, Contractor has sixty (60) days from finalization of the inventory to produce missing equipment or provide a written plan for replacement.

24.4 City reserves the exclusive right, privilege and responsibility of installing vending machines on the Premises. City shall receive all commissions resulting from the sale of vending machine items and shall hold all concession rights to said machines. However, City agrees to limit the number and character of installed vending machines so that they do not directly compete with Contractor's rights under this Agreement. In no case shall Contractor install, rent or otherwise profit from sale of vending machine items without the written consent of City.

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

24.6 Contractor is responsible for all maintenance and service agreements for the Food and Beverage Service and Concession Service Equipment. Equipment which is supplied in good condition by City shall be maintained by Contractor in the same condition, other than normal wear and tear, at Contractor's expense. Contractor shall immediately notify the Convention Facilities Director of any equipment failure that will adversely affect the Food and Beverage Service and Concession Service operations or result in the spoilage of food, etc. Contractor shall send a follow-up notice to the Convention Facilities Director when repairs and/or services are completed.

24.6.1 Contractor shall not be required to repair or replace "obsolete equipment." "Obsolete equipment" is defined as equipment whose repair cost exceeds eighty-five percent (85%) of its fair market value.

24.7 Contractor shall not remove any City-owned or leased equipment from the Premises.

XXV. FACILITIES

25.1 City shall be responsible for the following services with respect to the Premises:

- a) Provide adequate ingress and egress, including reasonable use of the corridors, passageways, and loading platforms.
- b) Make such improvements and/or alterations to the Food and Beverage Service and Concession Service Facilities as it may deem necessary in its sole discretion.
- c) Maintain and repair the building structures in the Food and Beverage Service and Concession Service Facilities, such as the maintenance of water, sewer (except for

blockage caused by the Contractor) and electrical lines, ventilation and air conditioning lines and systems, repair of electrical lighting fixtures, (including re-lamping); heating systems; floor coverings, wall and ceilings. Contractor, however, shall bear the expense of repairs resulting from the acts or omissions of Contractor, Contractor's Personnel, vendors, agents, subcontractor's or as otherwise provided herein.

- d) Provide, at no charge to Contractor, such heat, light, power, water sources, and air conditioning that may be reasonably required for the efficient operation of the Food and Beverage Service and Concession Service Facilities.
- e) Provide sanitary toilet facilities for Contractor's Personnel.
- f) Provide cleaning services in all areas of the Center, excluding the Food and Beverage Service and Concession Service Facilities.
- g) Provide office space for the GM and for administrative activities such as purchasing, invoice reconciliation, storage and payroll as set forth in Addendum II. Contractor shall supply office equipment as needed. Contractor shall provide a list of all Contractors owned and leased office equipment brought on site to the Convention Facilities Director on the annual anniversary date of this Agreement for the term of this Agreement.
- h) Provide periodic major repair of floors, carpets, ceilings, walls, windows, light fixtures, draperies, blinds and vents in the Food and Beverage Service Facilities.

25.2 Contractor shall be responsible for clearing all blockages to sewer lines on the Premises caused by Contractor.

XXVI. CITY'S USE OF FACILITY

26.1 City shall have the right to use the dining areas and meeting spaces in the Center, Lila Cockrell Theater, and the City's Municipal Auditorium for non-food service events at any time, unless such spaces have been previously committed for use in connection with Food and Beverage Service and Concession Services under this Agreement.

XXVII. CITY'S ACCESS TO FACILITY

27.1 City shall have 24-hour access to all parts of the Premises and other areas in which Contractor may be working.

XXVIII. ADVERTISING

28.1 Contractor shall not in any manner use City's logo, or Food and Beverage Service and Concession Service Facilities for advertising, publicity, marketing, or public relations purposes without the Convention Facilities Director's prior written approval.

XXIX. SPATIAL MODIFICATIONS

29.1 Contractor shall not construct any modifications to the Food and Beverage Service and Concession Service Facilities without the prior written approval of the Convention Facilities Director in his/her sole discretion.

XXX. TEXAS LAW TO APPLY

30.1 It is mutually understood and agreed by Contractor and City that the construction, interpretation, and performance of this Agreement and all associated or resultant transactions shall be governed by the laws of the State of Texas and any and all negotiations and dispute resolutions with regard thereto shall occur within the State of Texas.

XXXI. SEVERABILITY PROVISIONS

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

XXXII. NON-WAIVER OF PERFORMANCE

32.1 No waiver by City or Contractor of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of the City or Contractor to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either Party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged.

32.2 Whenever, under this Agreement, approvals, authorizations, determinations, satisfactions or waivers are authorized or required, such approvals, authorizations, determinations, satisfactions or waivers shall be effective and valid only when in writing, signed by the duly authorized signatories or their successors who have executed this Agreement and delivered to the party to whom it is directed.

XXXIII. AMENDMENTS TO THIS AGREEMENT

33.1 No terms of this Agreement shall be altered or modified unless done so in writing, referred to as an amendment to this Agreement, and signed by the duly authorized signatories or their successors who have executed this Agreement.

XXXIV. TERMINATION OF CONTRACT

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

- a) Give Contractor notice of the default, specifying the corrective action and providing a thirty (30) day time period within which corrective action must be taken to avoid termination of this Agreement by City (if such default cannot be reasonably cured within thirty (30) days, such longer period of time as is reasonably needed to accomplish such corrective action may be requested of the Convention Facilities Director); and
- b) If the Contractor has failed to complete such corrective action within the stated time period, and if City intends to terminate this Agreement for cause, then City must give Contractor at least thirty (30) day's prior written notice of such intention. Thirty (30) days thereafter, this Agreement and City's obligations and duties hereunder will end, regardless of any corrective action by the Contractor.

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

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

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

34.2.2 A walk-through of the Food and Beverage Service and Concession Service Facilities shall also be taken to inventory its condition at that time.

34.3 Upon expiration or termination of this Agreement, City shall have the option, to be exercised in its sole discretion, of buying at fair market value, some or all equipment and smallwares owned and used by Contractor in operating the Center and which are maintained on the Premises.

34.4 If, within thirty (30) days of termination of this Agreement, City determines that any part of the Food and Beverage Service and Concession Service Facilities and/or Food and Beverage

Service and Concession Service Equipment are damaged by Contractor, and that such condition was not evident in the final inventory or walk-through as described in Sections 34.2.1 and 34.2.2, City reserves the right to have Contractor pay for repairs to said damaged facilities and/or equipment caused by Contractor. This clause shall survive the expiration of this Agreement.

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

XXXV. NOTICES

35.1 All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent registered or certified mail, return receipt requested, postage prepaid to the addresses of the parties listed below.

CITY:

City Clerk's Office
P.O. Box 839966
San Antonio, Texas 78283-3966

and

Convention Facilities Director
P.O. Box 1809
San Antonio, Texas 78296

Or by hand delivery to:

City Clerk's Office
100 Military Plaza
San Antonio, Texas 78205

and

Convention Facilities Director
200 E. Market
San Antonio, Texas 78205

CONTRACTOR:

The RK Group L.L.C.
P.O. Box 1361
San Antonio, Texas 78295

The RK Group L.L.C.
1220 E. Commerce
San Antonio, Texas 78205

Notice of changes of address by either party must be made in writing and delivered to the other party's last known address within five (5) Business Days of such change.

XXXVI. COMMUNITY AND MBE CATERERS ENRICHMENT PLAN

36.1 Within thirty (30) days of the effective date of this Agreement, Contractor shall submit to the Convention Facilities Director, for his approval, a MBE Caterers Enrichment Plan that includes, but is not limited to, the following areas:

- a. Culinary Excellence through on the job training, purveyor workshops and a "Chef Showcase";
- b. Business Basics addressing technology, hiring and training of staff, marketing, and fiscal policies;
- c. Business Development by identification of opportunities outside of the Center; and
- d. Day- to- Day Catering Operations by educating Contractor's MBE Members in the daily operations involved in performing Food and Beverage Service and Concession Services for a large convention center.

The MBE Caterers Enrichment Plan shall be designed to expose all of Contractor's MBE Members to various aspects of convention center catering and to provide an ongoing continuing education program intended to keep Contractor's Members current on material components of convention center engagements.

36.2 On an annual basis (February 1-January 31), Contractor agrees to ensure that products, goods and/or services of not less than One Hundred Thousand Dollars (\$100,000.00) per year are donated to San Antonio non-profit organizations as its Community Enrichment Plan. In addition, Contractor agrees to provide Ten Thousand Dollars (\$10,000.00) annually in scholarship funds to be distributed to local students seeking careers in the hospitality industry or culinary arts. The distributions shall be in accordance with Contractor's Scholarship Program to be developed by Contractor, approved by the Convention Facilities Director, and implemented within thirty (30) days of the effective date of this Agreement. On or before March 1 of each year of this Agreement (beginning March 1, 2006), Contractor shall provide to the Convention Facilities Director a report identifying required (a) donations to non-profit organizations and (b) all scholarship beneficiaries, for the prior period February 1 through January 31.

36.3 Contractor agrees to work in conjunction with area educational institutions having hospitality or culinary arts programs to develop and implement an internship program for local students. Such program shall be approved by the Convention Facilities Director within thirty (30) days of the effective date of this Agreement, and shall be implemented pursuant to the internship program.

XXXVII. GENERAL ACCOUNTING/PAYMENT TERMS

37.1 Contractor understands that City operates on an accrual accounting basis (October 1st through September 30th). Within twenty (20) calendar days following the close of each accounting period (month), Contractor shall furnish City with a statement of sales and additional commission fees as specified in Articles XXXVIII and XL in a format acceptable to City. In the event Contractor does not submit the statement of sales and/or the commission fees by the due date, City shall give Contractor written notice and Contractor shall have two (2) Business Days from the receipt of notice to submit the required statement and commission fees unless the time

period is extended in writing at the sole discretion of the Convention Facilities Director. Failure by Contractor to submit the statement of sales and additional commission fees within two (2) Business Days notice, unless the Convention Facilities Director grants additional time in writing, shall subject Contractor to a penalty of an additional ten percent (10%) of the amount due and owing by Contractor and/or Contractor's Members to City and shall make Contractor in default of this Agreement.

XXXVIII. COMPENSATION TO CITY FOR FOOD AND BEVERAGE SERVICE

38.1 In return for the right to exclusively conduct Food and Beverage Service operations at the Center and Lila Cockrell Theater, including Other Services as described in this Agreement, but excluding Fixed, Temporary, or Portable concessions, Contractor shall pay to City on a monthly basis the following commissions:

- a. If annual Gross Receipts do not exceed thirteen million dollars (\$13,000,000.00) a commission in the amount of 25% of Gross Receipts for all Food and Beverage Services and Other Services provided at the Center and Lila Cockrell Theater by Contractor; and
- b. For Gross Receipts exceeding thirteen million dollars (\$13,000,000.00) but which do not exceed fifteen million dollars (\$15,000,000.00), then a commission in the amount of 22.85% of Gross Receipts for all Food and Beverage Services and Other Services provided at the Center and Lila Cockrell Theater by Contractor will be paid on the amount in excess of thirteen million dollars (\$13,000,000.00) and less than fifteen million dollars (\$15,000,000.00); and
- c. For annual Gross Receipts exceeding fifteen million dollars (\$15,000,000.00) a commission in the amount of 21.10% of Gross Receipts for all Food and Beverage Services and Other Services provided at the Center and Lila Cockrell Theater by Contractor will be paid on the amount in excess of fifteen million dollars (\$15,000,000.00).

38.2 It is understood by Contractor that all commissions due to City shall be calculated from the amount actually billed to the Customer of the Center or Licensee, or, in the event Food and Beverage Services are provided to an organization or group of individuals attending an event of a Customer of the Center or Licensee at the Center, the amount actually billed to that organization or group of individuals, for all events held in the Center or Lila Cockrell Theater where Food and Beverage Services are performed (i.e. Customer is charged all-inclusive price of \$200/person for an event). Commissions are to be calculated before taxes and service charges (gratuities).

38.2.1 Commission waivers, if any are given, must be approved in advance and in writing by the Convention Facilities Director, and a copy of the approval document must be included in Contractors monthly sales report and also kept in Contractor's file.

38.2.2 In the event a waiver is not received and/or approved before an event, and Contractor acts as if such waiver is approved, the City's commission will be due and

payable on the next commission submission with ten percent (10%) interest added to the amount actually due.

38.3 Contractor agrees that they shall not barter, trade, or discount any and all Food and Beverage Services and/or Other Services provided by Contractor under this Article that are commissionable to City unless prior written approval is received from the Convention Facilities Director.

38.4 It is the responsibility of Contractor to request prior written approval from the Convention Facilities Director for any additional charges to a Customer of the Center including but not limited to convenience charges, surcharges, service charges (non-gratuity), etc. which are assessed any Customers of the Center. An explanation of the additional fees/charges shall accompany the request. It is in the sole discretion of the Convention Facilities Director to approve or deny Contractor's request for additional charges to Customer's of the Center.

38.5 City and Contractor agree that the commission percentages set forth in this Article shall be applicable to any and all agreements entered into on or after November 1, 2004 with the exception of the San Antonio Breast Cancer Symposium to be held in December 2004 which is to be subject to the commission rates as described in the Initial Term of this Agreement.

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

38.7 The Convention Facilities Director may waive commissions for Food and Beverage Services and/or Other Services invoiced to the City (1) for City sponsored events that are held at the Center or (2) if it will facilitate the marketing of the Center.

XXXIX. NON-COMMISSIONABLE OFF-SITE SALES

39.1 Contractor may perform off-site Food and Beverage and Other Services not associated with the performance of this Agreement. In such cases, no commission will be due to City provided that none of the Contractor's Essential Management staff or Food and Beverage Service and Concession Service Equipment is used without the written consent of the Convention Facilities Director.

39.2 In the event that an off-site Food and Beverage and/or Other Service is being requested of Contractor by a Customer of the Center, Contractor must provide written notice to the Convention Facilities Director of the request prior to the submission of any written proposal to perform Food and Beverage and/or Other Services at such an event. The Convention Facilities Director must respond in writing to Contractor within two (2) Business Days of receiving Contractor's written notice or the proposed off-site event will be deemed approved. The Convention Facilities Director may disapprove the offsite event and, in the alternative, work with Contractor to secure the event at the Center. If performance at the Center is unacceptable to the Customer of the Center, Contractor may perform such services at the off-site location without paying a commission to City.

XL. CONCESSION SERVICE OPERATIONS

40.1 In addition to Food and Beverage Services to be performed at the Center and Lila Cockrell Theater, Contractor shall have exclusive right and privilege of selling and serving Food and Beverage Services (including alcoholic beverages) and related items (with the exception of Novelties and Souvenirs at the Municipal Auditorium,) at permanent or temporary stands and Portable Concessions at the Center, Lila Cockrell Theater, and the City's Municipal Auditorium during public events, provided that such exclusive right and privilege can be secured by City prior to the effective date of this Agreement. Should City secure such exclusive right and privilege and in return for the exclusive right to conduct Fixed, Temporary or Portable Concessions as described herein, Contractor shall pay to City, on a monthly basis as described in Article XXXVII of this Agreement, the following commissions:

a. For Non-Licensed Sales, a commission in the amount of thirty-five percent (35%) of Gross Receipts for such concession sales; and

b. For Licensed Sales, a commission on Gross Receipts, less licensing, royalty or franchise fees or other like fees, for such Licensed Concession Sales as follows:

Sales Amount	Commission
\$0.00 up to \$100,000.00	Fifteen Percent (15%)
\$100,000.00 up to \$250,000.00	Twenty Percent (20%)
\$250,001.00 up to \$400,000.00	Twenty-Five Percent (25%)
\$400,001.00 up to \$550,00.00	Thirty Percent (30%)
in excess of \$550,000.00	Thirty-Five Percent (35%)

40.1.1 For the purpose of this Article, "Non-Licensed Sales" shall mean sales upon which no licensing, franchise; royalty or other fee is paid to a Licensor, Franchisor, Royalty owner or other like interest, on sales of a product.

40.1.2 For the purpose of this Article, "Licensed Sales" shall mean sales upon which a licensing, franchise, royalty or other similar fee is paid to a Licensor, Franchisor, Royalty owner or other like interest, on sales of a product.

40.1.3 All fees, costs and expenses associated with acquiring any and all licensing rights in connection with licensed sales shall be borne solely by Contractor.

40.1.4 For Licensed Sales, Contractor shall provide a copy of the proposed License Agreement or other such agreement to the Convention Facilities Director for approval prior to the effective date of said License Agreement or other agreement, such approval to not be unreasonably withheld.

40.2 Contractor, Contractor Members, and subcontractors used to perform under this Article must use cash registers, computerized point-of-sale registers, or a prior approved City inventory sales method. City shall have access to all such sales and management reports.

40.3 Contractor shall provide to City, in a format acceptable to City, a written summary of each Concession within two (2) business days of that event, indicating where appropriate, customer pricing, guarantees, sales by area, total inventory sales, total register sales, and cash overages and shortages. If requested, Contractor shall attach the corresponding deposit ticket and credit card transmission reports to all daily sales reports.

40.4 Cash shortages over one percent (1%) of inventory sales and cash register readings, whichever is greater, may not be deducted from Gross Receipts for purposes of Commission payments. Such cash shortages shall be calculated on an aggregate basis for the period of each contracted year. All cash shortages shall be reported to City on a monthly basis.

40.5 City reserves the right to install vending machines in the Center, Lila Cockrell Theater, and City's Municipal Auditorium. However, City agrees to limit the number and character of installed vending machines so that they do not directly compete with Contractor's rights under this Agreement. Contractor may request in writing the approval of City to install vending machines in specified areas, stating specifically the type and price of items to be vended, the proposed location of the machine and, if the machine is owned and serviced by a person, firm or corporation, other than Contractor, the name and address of such person, firm or corporation. The approval is at the sole discretion of City.

40.6 Contractor is granted the exclusive right and privilege of selling Novelties at the Center and Lila Cockrell Theatre. It is understood and agreed that Contractor may authorize certain subcontractors or Customers of the Center that are approved in advance of the event by the Convention Facilities Director to directly sell souvenirs, photos, compact discs, etc. at the Center and Lila Cockrell Theatre that are appropriate to the particular occasion or event. All necessary and proposed licenses between Contractor and subcontractors shall be submitted to the Convention Facilities Director for his prior approval.

40.6.1 Contractor shall receive a maximum of thirty-five percent (35%) of gross sales of Novelties (excluding Compact Discs), after sales taxes, and shall pay the City fifty-percent (50%) of Contractor's percentage.

40.6.2. Contractor shall receive a maximum of twenty percent (20%) of gross sales of Compact Discs and shall pay the City fifty-percent (50%) of Contractor's percentage. This amount shall be collected only when Contractor utilizes its own staff and equipment to sell Compact Discs.

40.6.3 Contractor shall pay City fifty percent (50%) of any amount collected from a "buyout" provision offered by a Customer of the Center, Licensee, or Promoter. A "buyout" is defined as an authorization for the customer, licensee, and/or promoter or their representatives to sell their own novelties or souvenirs and pay the customer, licensee, and/or promoter or their representative an agreed upon flat rate (i.e. \$1,000).

40.6.4 Deviations from these percentages shall be approved by the Director, in writing, prior to offering reductions to the Customer of the Center, Licensee, and/or promoter or their representative.

40.6.5 City reserves the right to suspend Contractor's exclusive right and privilege of selling Novelties at the Center and Lila Cockrell Theatre if such right is necessary to secure an event at the Center.

40.7 Contractor may engage in other concession activities if approved by the Convention Facilities Director prior to the event and in writing. This concession right does not include the sale of programs incident to the event.

40.8 Contractor shall not sell or display any item or items or operate any concession which would be considered distasteful to City or to persons to whom the City has licensed the Premises covered by this Agreement for religious services, or other types of events wherein the sale of certain food, beverages, novelties or other merchandise could be distasteful, objectionable or inappropriate on the given occasion. The same shall first be determined between Contractor and the Customer of the Center or Licensee and in the event they cannot agree, the final decision shall be made by the Convention Facilities Director.

Under this Section, Licensee is defined as an individual, group or organization executing a Short-Term License Agreement with the City to occupy space at the Lila Cockrell Theater and/or City's Municipal Auditorium.

40.9 It is understood by City and Contractor that Contractor's obligations to assume responsibility for existing concession stands on the Premises is subject to a thirty (30) day transition period from the effective date of this Agreement. After such thirty (30) day period, Contractor shall assume full responsibility for conducting Concession services in accordance with this Article.

XLI. CAPTIONS

41.1 The captions contained in this Agreement are for convenience of reference only and shall not in any way limit or enlarge the terms and/or conditions of this Agreement.

XLII. PERFORMANCE BOND REQUIREMENTS

42.1 The Contractor shall cause to be made, executed and furnished to the City upon the effective date of this Agreement a Performance Bond acceptable to City in the amount of two hundred thousand dollars (\$200,000.00) conditioned on the faithful performance of all condition and covenants of this Agreement. The Performance Bond shall be issued by a surety authorized to do business in the State of Texas. The Performance Bond is to be renewable on each anniversary date of this Agreement or extension hereto. The performance bond is subject to annual review by the City and the amount of the bond may be increased at the sole discretion of the City as it deems necessary.

XLIII. INDEPENDENT CONTRACTOR

43.1 It is expressly understood and agreed that Contractor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions, and that City shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party, as creating the relationship of employer-employee, principal-agent, partners or any other similar such relationship between the parties hereto.

XLIV. ENTIRE AGREEMENT AND AMENDMENTS

44.1 This Agreement represents the entire and integrated Agreement between the Parties and supersedes all prior negotiations, representations or agreements, either oral or written.

XLV. ACTS OF GOD

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

XLVI. AUTHORITY

46.1 Contractor warrants that those individuals signing this Agreement have the authority to bind Contractor to this Agreement.

Signatures appear on next page.

Executed in triplicate originals this _____ day of _____, 2004, to be effective February 1, 2005.

**CITY OF SAN ANTONIO
TEXAS MUNICIPAL CORPORATION**

**RK GROUP L.L.C.
a limited liability corporation**

J. Rolando Bono
Interim City Manager

Greg Kowalski
Managing Member

Attest:

City Clerk

APPROVED AS TO FORM:

Andrew Martin
City Attorney

ADDENDA

Addendum I	Equipment Schedule
Addendum II	Food and Beverage Service and Concession Service Facilities
Addendum III	Cleaning of Facilities
Addendum IV	Comprehensive Report Schedule
Addendum V	RK Group L.L.C. Percentage of Ownership

Addendum I
Henry B. González Convention Center
East Kitchen Equipment Schedule

Item No.	Qty.	Description
1	18	Cart, Heated Plate
2	1	Cart, Utility
3	2	Charbroiler
4	1	Cooler, Walk-in
5	3	Cooler/Freezer Complex, Walk-in
6	1	Dishwasher
7	1	Sheet Pan Dispenser, Mobile
8	1	Garbage Disposer
9	22	Dolly, Rack
10	4	Water Filter
11	1	Fryer
12	2	Griddle, Mobile
13	1	Heater, Booster
14	3	Reel Hose
15	2	Ice Machine (1 bin, 2 cubers)
16	2	Kettle, 40 Gal
17	2	Kettle, 60 Gal
18	1	Mixer Table w/ accessories
19	1	Mixer, 20 qt.
20	1	Mixer, 60qt
21	1	Mixer, Stand
22	2	Oven, Combination Steamer, w/ rack
23	2	Oven, Convection
24	1	Oven, Rotating Rack
25	17	Rack, Dunnage
26	2	Rack, Oven Rolling
27	1	Rack, Over Shelf
28	1	Rack, Pot and Utensil
29	9	Rack, Refrigerator Roll-in
30	34	Rack, Roll-in Salad Cart
31	1	Range, Graduate Heat Top
32	2	Range, Open Burner Top
33	1	Refrigerator, Roll Through, 3 compartment
34	1	Refrigerator, Roll-in
35	1	Shelf, Dry Storage
36	5	Shelf, Pot/Pan Mobile
37	1	Shelf, Wall
38	6	Sink, Hand w/soap & towel dispenser.
39	2	Sink, Soak
40	1	Sink, Utility Mop
41	2	Skillet, Tilt
42	1	Slicer
43	1	Steamer, Convection
44	1	Table, Beverage
45	2	Table, Dish Cleaning
46	1	Table, Island prep w/four sinks
47	7	Table, Work
48	1	Table, Work mobile
49	1	Table, Work w/backsplash

Addendum I
Henry B. González Convention Center
East Kitchen Equipment Schedule

Item No.	Qty.	Description
50	4	Table, Work w/sink
51	1	Table, Work w/sink & drawer
52	1	Washer, Pot w/table
53	1	Water Station

Addendum I
Henry B. González Convention Center
West Kitchen Equipment Schedule

Item No.	Qty.	Description
1	2	Charbroiler
2	1	Chopper, Buffalo
3	2	Cooler, Walk-in
4	6	Cooler/Freezer, Walk-in
5	1	Dishwasher
6	1	Dispenser, Sheet Pan Mobile
7	1	Garbage Disposer
8	1	Freezer, Walk-in
9	1	Fryer, Gas
10	1	Heater, Booster
11	1	Reel Hose
12	4	Kettle, 40-Gal.
13	1	Mixer, 60-Qt.
14	8	Oven, Convection
15	2	Oven, Pizza
16	1	Food Processor
17	20	Rack, Dunnage
18	2	Range, Open Burner Top
19	53	Shelf, Dry Storage
20	2	Sink, Hand
21	1	Sink, Three compartment w/garbage disposal
22	2	Sink, Three compartment
23	4	Skillet, Tilt
24	1	Steamer, Pressure/ pressureless
25	1	Table, Beverage
26	1	Table, Beverage w/ sink & drain
27	1	Table, Dish cleaning
28	18	Table, Prep
29	2	Table, Work w/ sink & drawer
30	1	Washer, Can

Addendum I
Henry B. González Convention Center
North and South Pantries Equipment Schedule

Item No.	Qty.	Description
1	12	Cabinet, Cook and Hold
2	8	Cart, Heated Banquet
3	7	Cart, Heated Bulk Food Transport
4	12	Cart, Heated Plate
5	1	Cooler, Walk-in
6	1	Filter, Water
7	1	Heater, Booster
8	1	Ice Machine (1 bin, 2 cubers)
9	20	Rack, Refrigerator Roll-in
10	1	Sink, Hand w/soap & towel dispenser
11	1	Sink, Icing
12	1	Sink, Three Compartment
13	1	Table, Beverage
14	2	Table, Plating

Addendum I
Henry B. González Convention Center
Miscellaneous Catering Equipment Schedule

Item No.	Qty.	Description
1	3	Bar, Portable
2	11	Cabinet, Cook and Hold
3	10	Cart, Bus
4	24	Cart, Heated Banquet
5	43	Cart, Heated Bulk Food Transport
6	22	Cart, Heated Plate
7	13	Cart, Plate Cover
8	30	Cart, Queen Mary
9	6	Cart, Service
10	3	Cooler, Walk-in
11	6	Dolly, Shelving Truck
12	13	Freezer, Roll-In
13	2	Griddle, Mobile
14	12	Handle, Dolly Dish Rack
15	3	Heater, Booster
16	1	Ice Dispenser
17	1	Ice Flaker, (2) 2000 lb.
18	2	Ice Machine (1 bin, 1 cuber)
19	12	Ice Machine (1 bin, 2 cubers)
20	1	Ice Maker (small undershelf unit)
21	15	Rack, Bun Pan
22	24	Rack, Dolly Dish
23	3	Rack, Dunnage
24	42	Rack, Roll-in Salad Cart
25	1	Refrigerator, Reach-in
26	20	Refrigerator, Roll-in
27	1	Refrigerator, Walk-in
28	1	Shelf, Dry Storage
29	1	Shelf, Storage Mobile
30	2	Shelf, Wall
31	1	Sink
32	16	Sink, Hand
33	11	Sink, Icing
34	1	Sink, Three Compartment
35	4	Table, Beverage
36	3	Table, Beverage w/sink
37	1	Table, Mobile Plate
38	4	Table, Mobile Plating
39	2	Table, Plating, w/ drawers
40	1	Table, Prep
41	1	Table, Work
42	4	Table, Work w/sink
43	10	Truck, Platform
44	23	Water Filter

Addendum I
Henry B. González Convention Center and Lila Cockrell Theater
Assigned Concession Areas Equipment Schedule

Item No.	Qty.	Description
1	1	Cabinet, Heated Holding
2	2	Cabinet, Refrigerated
3	2	Charbroiler, Counter Model
4	5	Cooler, Walk-in
5	1	Dispenser, Condiment
6	2	Display case, Refrigerated
7	4	Draft Beer System
8	3	Filter, water
9	2	Fire Protection System
10	4	Freezer, Reach-in
11	2	Fryer w/ filtration system
12	2	Griddle, Counter Unit
13	3	Grill, Roller
14	2	Hood
15	2	Hot Food Display
16	4	Ice Maker w/ 2 cubers
17	2	Icemaker w/ 1 cuber
18	4	Rack, Beer Keg
19	23	Rack, Dunnage
20	2	Refrigerated Counter, Griddle Stand
21	2	Refrigerator, Reach-in
22	5	Refrigerator, Undercounter
23	2	Shelf, Wall-mounted
24	7	Shelving
25	3	Shelving, Pallet
26	6	Shelving, Plastic
27	10	Shelving, Stainless Steel
28	1	Sink, Hand
29	10	Sink, Hand w/ towel dispenser
30	4	Sink, Mop
31	1	Sink, One Compartment
32	8	Sink, Three Compartment
33	1	Sink, Two Compartment
34	6	Table, Work
35	2	Table, Work w/ backsplash
36	9	Tray, Support
37	2	Wall panel, Stainless steel
38	8	Warmer, Countertop
39	2	Water Heater

Addendum I
Municipal Auditorium
Assigned Concession Areas Equipment Schedule

Item No.	Qty.	Description
1	1	Sink, Two Compartment
2	2	Water Heater

Addendum II
Food and Beverage Service and Concession Services Facilities

Summary

1. Areas Assigned to Contractor including Cleaning and Extermination Responsibilities

- a. Convention Center – Third Level
 - 3018
 - 3019 – East Kitchen
 - 3020
 - 3023
 - C301D
 - C302A-D
 - C303B
 - Men's and Ladies Restrooms east of Kitchen

- b. Convention Center – Concourse Level
 - Office Space Assigned to Contractor
 - 2124
 - C202C
 - C203A
 - C205B
 - C206A
 - C206F
 - C207A
 - C207B
 - M208 – Wet Bar

- c. Convention Center – Street Level
 - East Kitchen Loading Dock – 601 Bowie Street
 - Men's and Ladies Restrooms by Bowie Loading Dock
 - 1148 - East Kitchen Dock Office
 - 1153
 - 1153A
 - C109B
 - North Pantry
 - South Pantry
Concession Areas – Street Level
 - Lila Cockrell Theater – One Each Level – Three Levels
 - 1155
 - 1164 – Concessions Office and Storage
 - H3
 - H13

Addendum II

Food and Beverage Service and Concession Services Facilities

Concession Areas – Street Level - continued

H14

H24

HA01

HC25

HD07

- d. Convention Center – River Level
West Kitchen Loading Dock – Shared with City
West Kitchen
0030 – West Kitchen Storage Area
C003C
C007B
C007G
- e. Municipal Auditorium – First Floor
West Wing Concession Stand
East Wing Concession Stand
- f. Municipal Auditorium – Basement
Concessionaire Kitchen and Storage

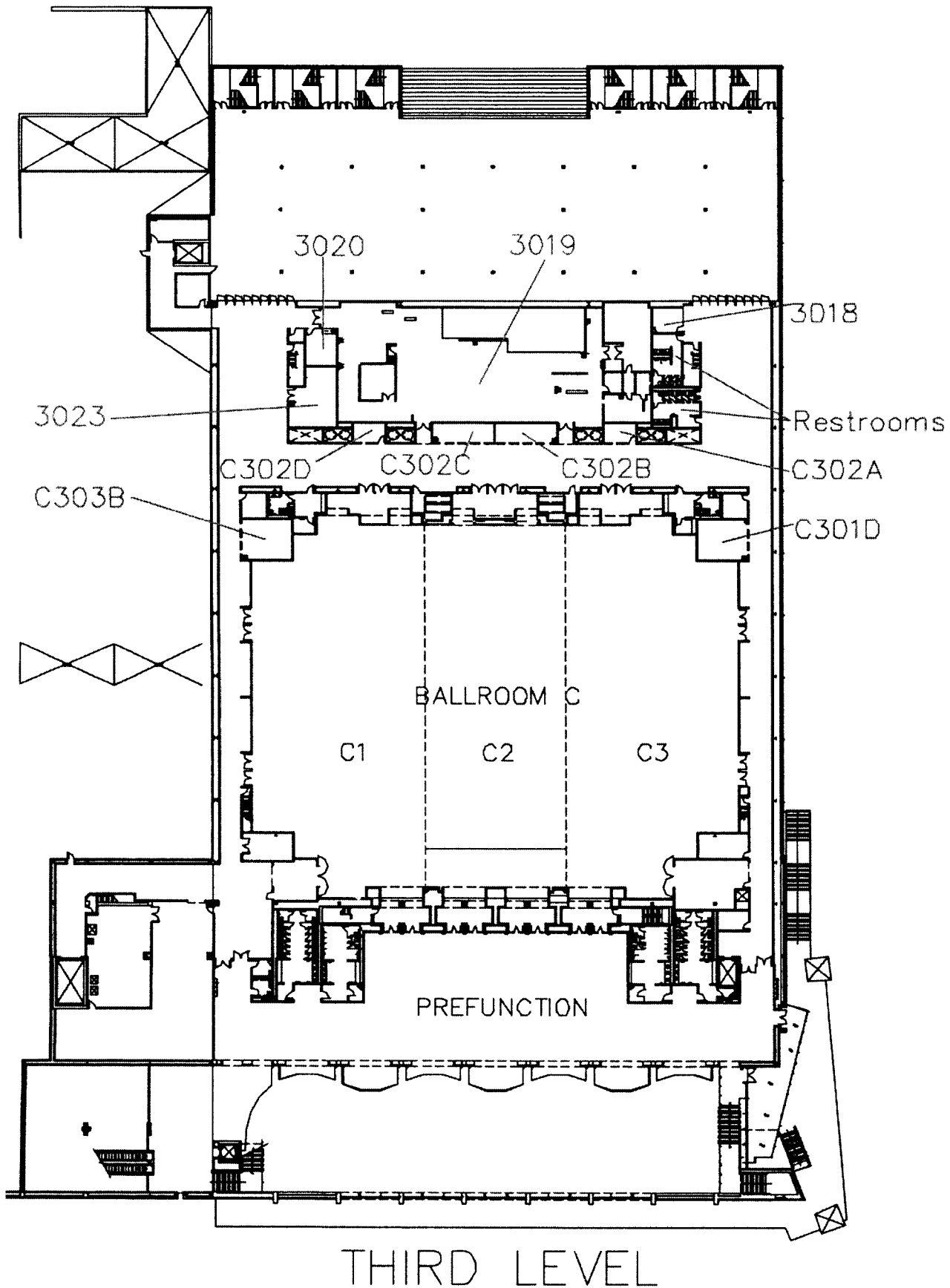
2. Loading Dock - Access Only – Street Level

- a. Bowie Street Exhibit Hall C&D Loading Dock – 615 Bowie Street

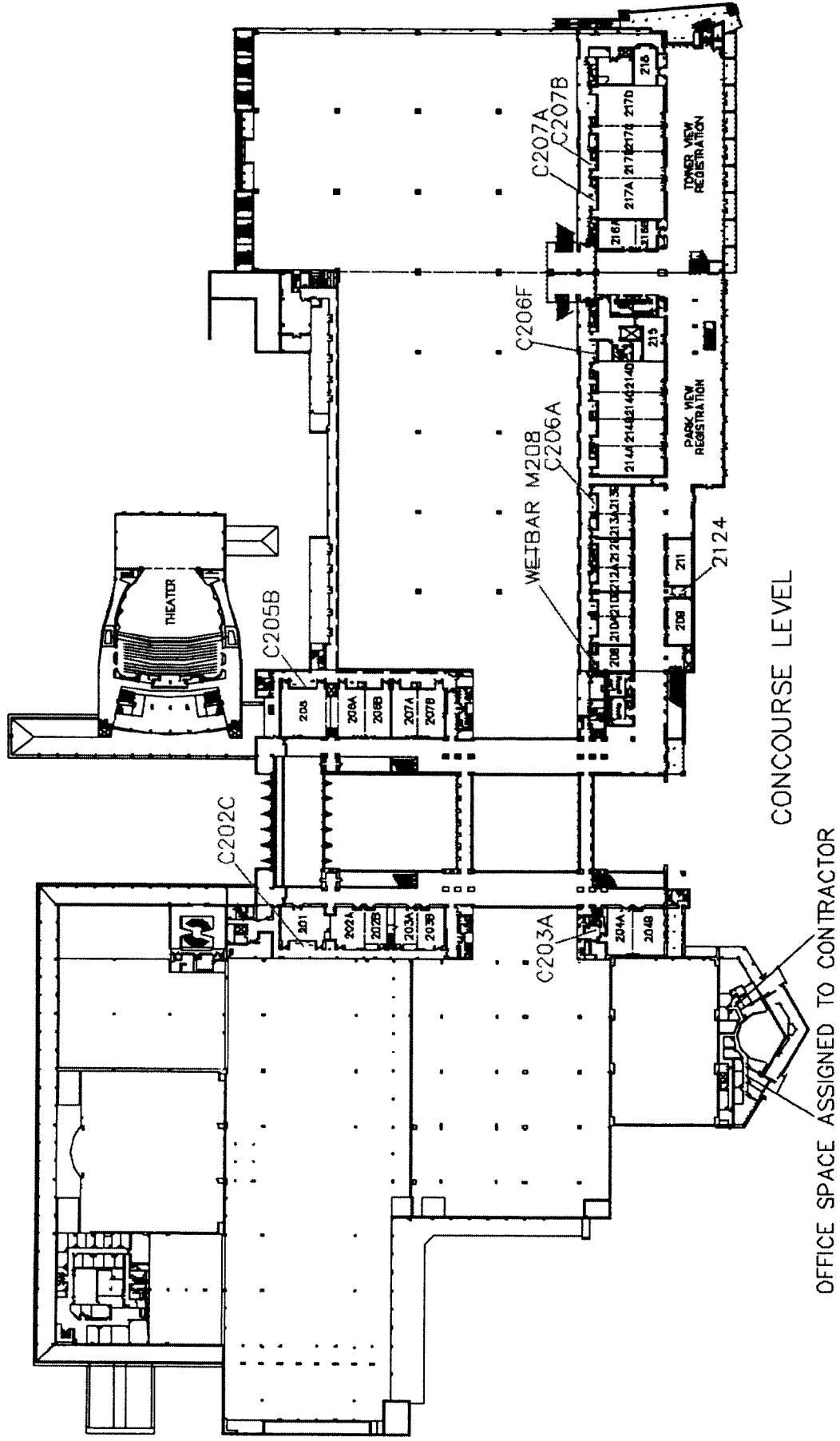
3. Employee Entrance and Exit Locations

- a. East Kitchen Loading Dock
- b. West Kitchen Loading Dock

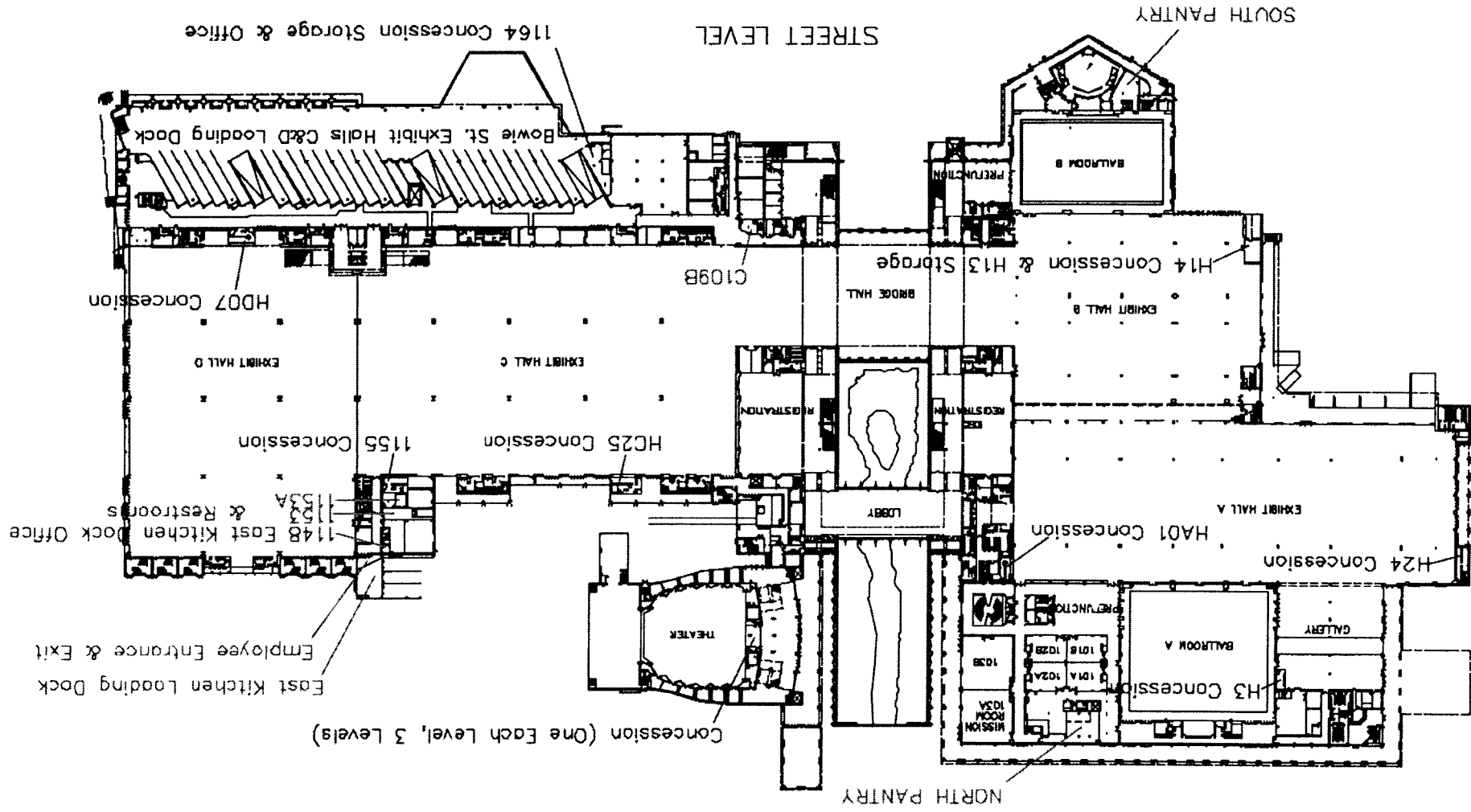
Addendum II
Food and Beverage Service and Concession Services Facilities



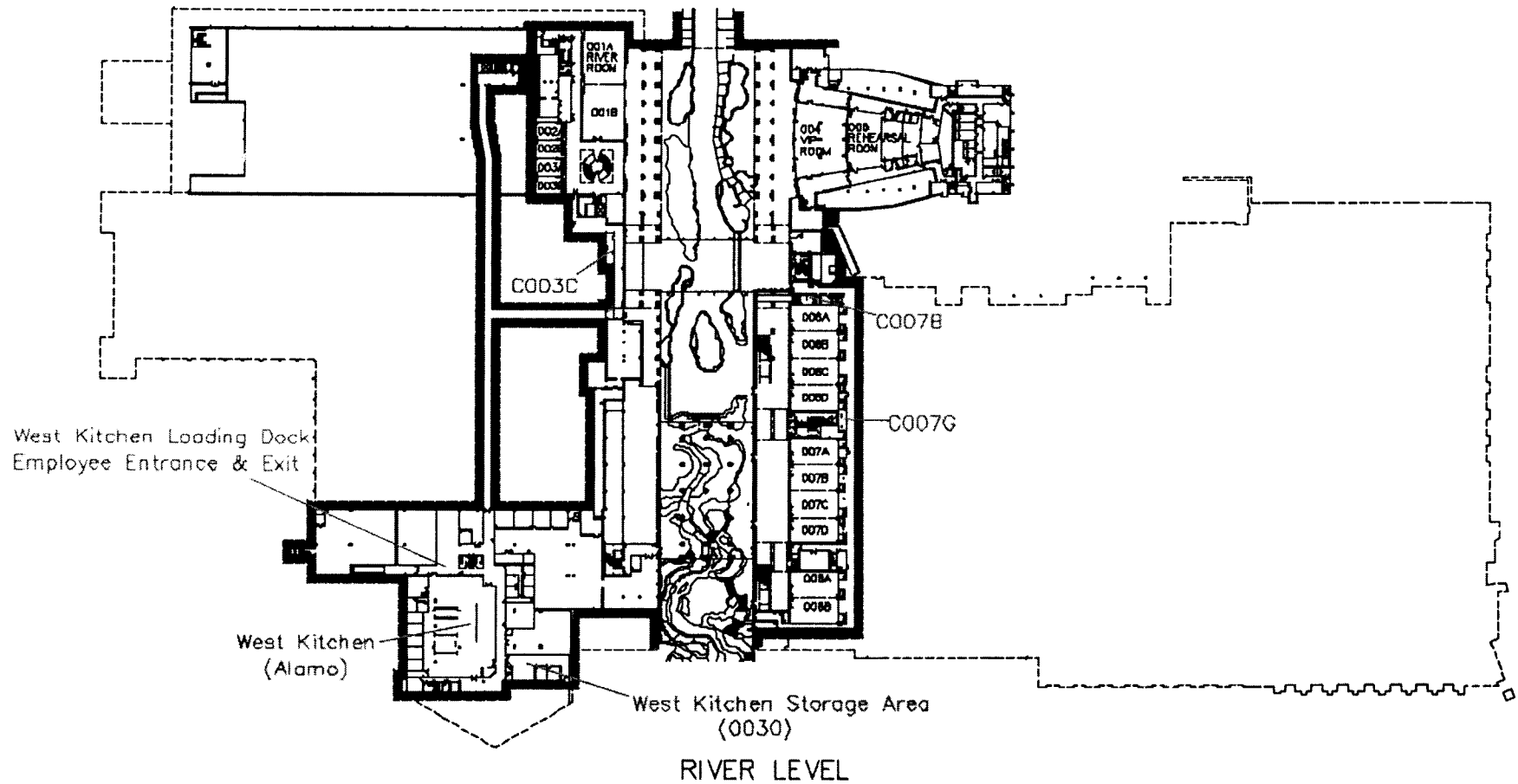
Addendum II **Food and Beverage Service and Concession Services Facilities**



Addendum II Food and Beverage Service and Concession Services Facilities

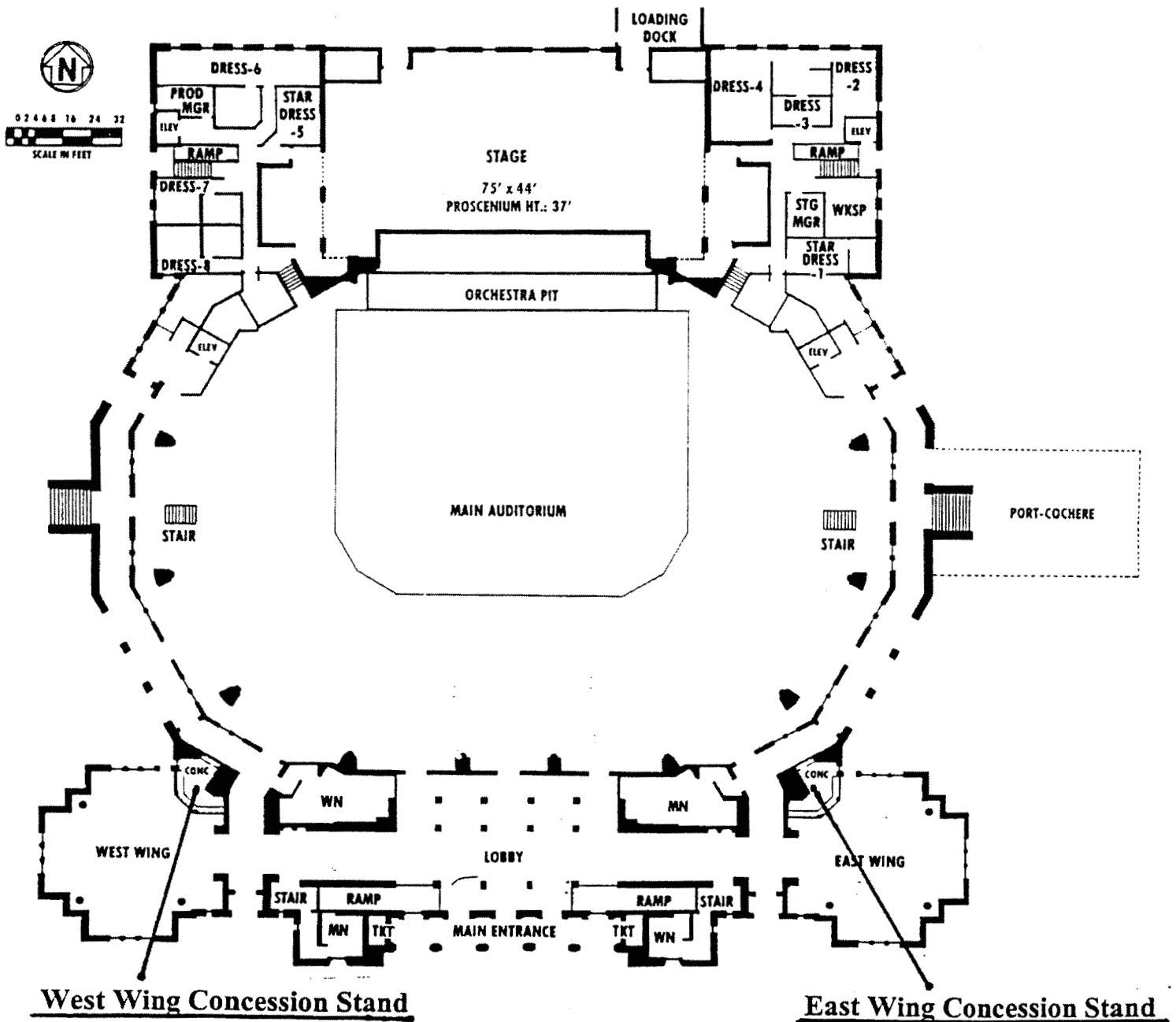


Addendum II
Food and Beverage Service and Concession Services Facilities



Addendum II
Food and Beverage Service and Concession Services Facilities

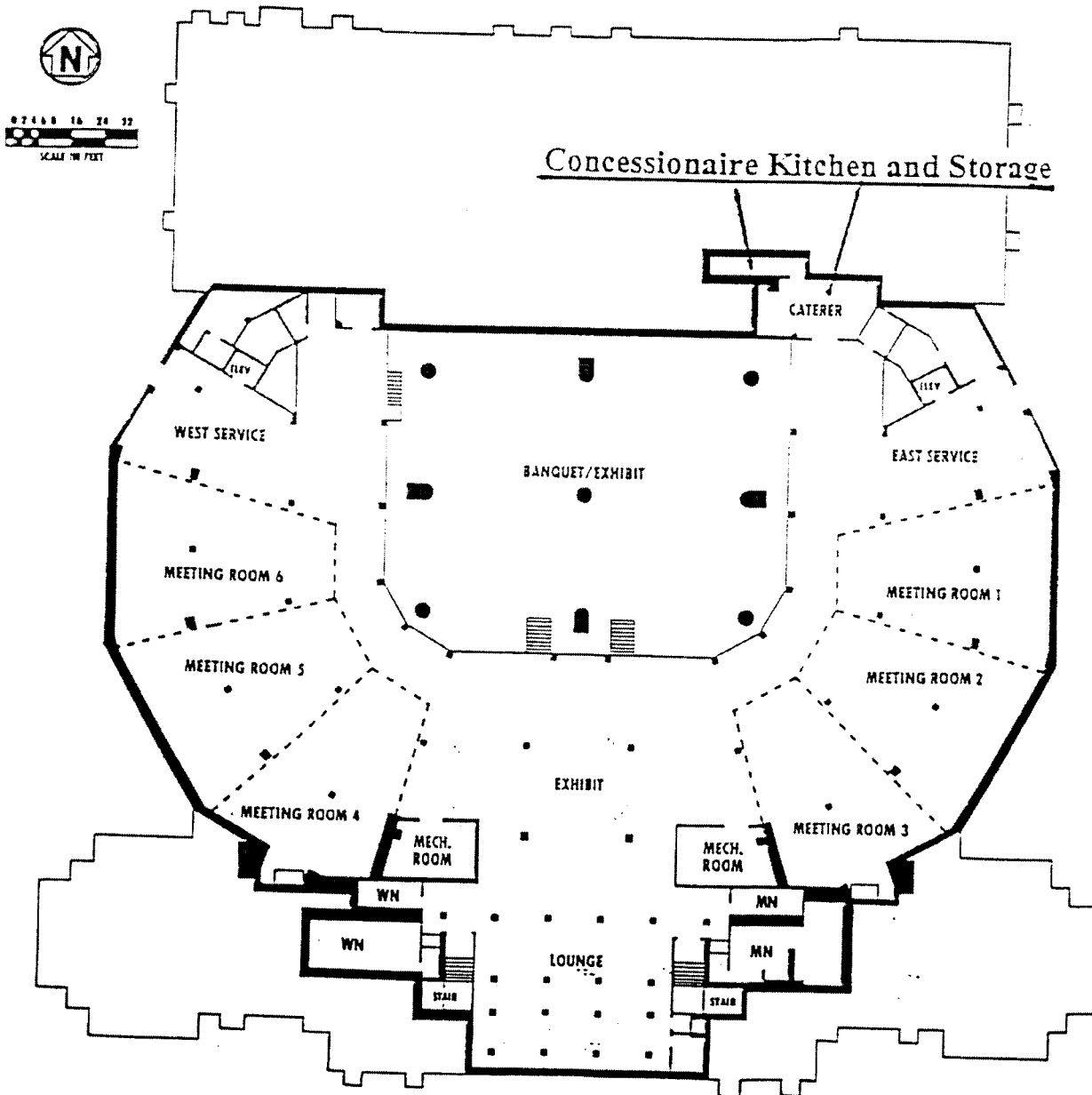
Municipal Auditorium – First Floor



EAST AND WEST WING: CAP. 125 THEATRE STYLE EACH

Addendum II
Food and Beverage Service and Concession Services Facilities

Municipal Auditorium – Basement



MEETING ROOMS 1-6: CAP. 100 THEATRE STYLE EACH
TOTAL EXHIBIT SPACE: 125 8' X 10' BOOTHS

ADDENDUM III

CLEANING OF FACILITIES

I. CONTRACTOR'S CLEANING RESPONSIBILITIES

- A. General Responsibilities: It shall be Contractors responsibility to maintain the cleanliness of the Food and Beverage Service and Concession Service Facilities throughout the term of this Agreement and any applicable Option Term. Contractor shall notify City of any maintenance problems beyond the scope of Contractor's maintenance responsibilities set forth in Article X.
- B. Specific Responsibilities: The Contractor shall establish and train Employees and Personnel to follow a clean-as-you-go policy. The policy shall include, but not be limited to, the following:
1. During each food and beverage or concession function, immediately clean all spillage which may occur and monitor dining areas and meeting rooms to maintain them in a clean and orderly fashion.
 2. After each food and beverage or concession function, clear all tables of all food and beverage related items and clean any related spillage on floor and walls.
 3. During and after each food and beverage or concession function, empty, clean and sanitize waste receptacles, properly dispose of trash in designated areas and perform other related sanitation functions during and after each event in all areas used by Contractor.
 4. Clean and sanitize all Contractor-owned waste receptacles daily.
 5. Clean all floor drains in the Food and Beverage Service and Concession Service Facilities and the loading docks on a regular basis and especially when food or grease is present.
 6. Adhere to sanitation laws, rules, regulations and orders of the Federal Government, the State of Texas, the County of Bexar, and the ordinances, regulations, safety and Health Codes of City for recommended warewashing temperatures and use of chemical sanitizers.
 7. Store all cleaning supplies in non-food areas.
 8. Clear the grease traps in the Food and Beverage Service and Concession Service Facilities at regular intervals, as required by law.
 9. Daily clean all Food and Beverage Service and Concession Service Equipment and Food and Beverage Service and Concession Service Facilities, except on Contractor's non-use days.
 10. Keep public and non-public areas free of hazardous conditions which are directly related to Contractor's activities under this Agreement.
 11. Clean all spillage which may occur on sections of loading docks where food and beverages are delivered, as necessary.
 12. Perform periodic cleaning of floors, ceilings, walls, windows, light fixtures, draperies, blinds and vents in the Food and Beverage Service and Concession Service Facilities.

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
3.1	Notice	Director	N/A	Exception to Exclusive Right - Inclement Weather	None Specified	Director
3.1	Notice	Director	N/A	Exception to Exclusive Right - Other Event	None Specified	Mutual Agreement
3.1.2	Action	City	Tenants of Facility	City to require four F&B providers, defined in the Agreement, to name Contractor as Addl. Insured at same levels of insurance required of providers by City.	Only that period of time Tenant/Providers use Facilities	None Specified
3.3.1	Notice	Director	Contractor	Notice of Unacceptable Levels of Service/Undesirable Practices	Immediately upon Knowledge	N/A
3.3.1	Action	Contractor	Director	Discontinue/Remedy Unacceptable Levels of Service/Undesirable Practices	Promptly Upon Notification	N/A
3.3.2	Payment	Contractor	City	Annual contribution of \$5,000 to City for marketing	Annually on October 1	
3.3.3	Report	Contractor	Director & Customer	Less Than "Good" Post-Function Experience Report Initial Response	W/in 48 Hours of Survey Receipt	N/A
3.3.3	Report	Contractor	Director & Customer	Less Than "Good" Post-Function Experience Report Complete Response	W/in 10 Days of Survey Receipt	N/A
4.1	Request	Contractor	Director	Use of F/B Facilities & F/B Equipment Other than for F/B Services for Customers	None Specified	Director in Writing
4.2	Request	Contractor	Director	Visitor Access to F/B Facilities	Before Access Permitted	Director
5.2	List	Contractor	Director	Essential Management Employees - Initial	W/in 30 Days of Effective Date of Agreement	Director
5.2	List	Contractor	Director	Essential Management Employees - Updates	As changes are proposed	Director
5.5	Manual	Contractor	Director	Personnel Policy	W/in 30 Days of Effective Date of Agreement	None Specified
5.7	Approval Request	Contractor	Director	Approval of Uniforms	W/in 30 Days of Effective Date of Agreement	Director
5.8	List	Contractor	Director	Names of Substitute Management Employees	None Specified	None Specified

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
5.9	Bond	Contractor	Director	Bond - For Cash Handling Personnel	W/in 30 Days of Effective Date of Agreement	None Specified
5.10	Notice	Contractor	Director	Anticipated Labor/Personnel/Vendor Problems	W/in 5 Working Days of Knowledge	None Specified
6.1	Amendment	Either or Both	Either or Both	Changes to access/control of Service Facilities assigned	From Time to Time	Mutual Agreement
7.1	Certificate	Contractor	Director	Certificate of Insurance - Initial - For each Contractor Member	Prior to Commencement of Any Work	Must Conform to Contract Requirements. City to approve deductibles (see 7.3).
7.2 & 7.3	Review/Modification	City	Contractor	Insurance Requirements & Deductibles	At any time (See 7.2 and 7.5)	City's Risk Manager
7.5	Copies	Contractor	City	Insurance Policies	Upon Request	N/A
7.7	Notice	Contractor	City	Insurance cancellations, non-renewal or change in coverage	No less than thirty (30) days prior to change or ten (10) days for cancellation	N/A
8.3	Notice	Contractor	City	Notice to City, in writing, of any claim or demand against Indemnitees or Contractor	Promptly Upon Notification	N/A
9.2.1	Action	Contractor	EDD	Participation in EDD Vendor Fair.	Annually	EDD
10.2	Notice	Contractor	City	Notice to City, in writing, of any potential violations of laws, rules, regulations and orders of the Federal, State or County government	Promptly Upon Notification	N/A
10.4.1	Notice	Contractor	Director	Notice to Director, in writing, of any violation notices received in connection with inspections performed in 10.4. Notice to include a report of action plans necessary to correct violations.	Immediately upon receipt of violation	N/A

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
10.4.2	Notice	Contractor	City	Prior notice to City, whenever possible, of inspections or no more than two (2) days thereafter.	Whenever possible	N/A
10.5	Notice	Contractor	Director	Notice to Director, in writing, of any condition in the Food and Beverage Service Facilities that is unsafe or unhealthy	Immediately upon knowledge	N/A
10.6	Notice	Contractor	City	Notice to City, in writing, of any accident or safety hazard that occurs in Center and is known to Contractor and also advise City in writing of action taken by Contractor to remedy any safety hazard	Immediately upon knowledge	N/A
10.9	Report	Contractor	Director	Submission of Contractor's Recycling Program.	W/ in 30 days of execution of this Agreement or amendments	Director
11.1.1	Report	Contractor	Director	Approval of all printed menus. Menus shall be provided to City for promotional purposes.	Not specified.	Director
12.1	Report	Contractor	Director	Approval of proposed pricing and portion sizes of all items available for sale.	Not specified.	Director
12.2.1	Report	Contractor	Director	Annual Pricing Study to be conducted. Survey set shall include at least three (3) local hotels and at least three (3) competitive convention centers around the country.	Annually on anniversary date. Survey set must be approved in advance.	Director
12.3	Report	Contractor	Director	Price adjustments needed for routine negotiations. To be reviewed annually.	As needed and annually.	Director
13.1	Notice	Contractor	Proper authorities & Director	Notice to proper authorities and Director in the event of a fire or other emergency	Immediately, as needed	N/A
13.1	Notice	City	Contractor	Supply emergency phone number to be used in event of fire or emergency.	Not specified.	N/A
13.1	Report	City	Contractor	Supply a copy of City's emergency procedures.	Not specified.	N/A

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

Section	Type of Requirement	From	To	Requirement	Time Frame	Approving Entity, if Any
13.2	Notice	Contractor	City	Prompt notice followed by formal written notice of any fire damage occurring to the Premises.	Promptly Upon Notification	N/A
13.2	Copies	Contractor	City	Copies of all notices claiming bodily injuries that occurred on the Premises.	Promptly	N/A
14.1	Report	Contractor	Director	Approval of Security Policy.	W/in 30 Days of Effective Date of Agreement	Director
14.1	List	Contractor	City/Director	List of names of Contractor's employees and updates to list as changes occur	Monthly	Director
14.2	Notice	Contractor	City	Notice to City of any and all Contractor's employees no longer working on the premises	Immediately upon knowledge	N/A
15.1	Report	Contractor	Director	Provide all reports requested by City such as reviewed financial statements and service reports.	As determined by City or within five (5) working days upon City's written requests	N/A
15.1.1	Report	Contractor	City	Shall submit reports in a format suitable to City. Contractor may seek approval of Director by proposing a format.	Not specified.	Director
15.2.2	Report	Contractor	City	Submission to City of a Report of Agreed Upon Procedures to be developed with an independent CPA firm.	Must be submitted w/in sixty (60) days of effective date of Agreement	Not specified
15.2.2	Approval	City	Contractor	Must approve or disapprove the Report of Agreed upon Procedures.	W/in Thirty (30) days of receipt	City
15.2.3	Copies	Contractor	City	Provide copy of audit reports and management letters to City	Not specified.	N/A
15.2.3	Payment	Contractor	City	Contractor to pay for audit if more than 1% error in reporting.	Not specified.	N/A
15.2.3	Copies	Contractor	City	Copy of audit report if error in calculation of payments is revealed	Thirty (30) days of the conclusion of audit	N/A

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
15.2.3	Payment	Contractor	City	If corrected payment is required by audit report to the City, contractor shall pay City amount due with interest at the rate of 18% per annum	Fifteen (15) working days of Contractor's receipt of such audit report	N/A
15.2.3	Payment	City	Contractor	If audit report indicates a refund is due contractor, contractor shall notify City in writing and include a copy of the audit report within thirty (30) days and City shall pay Contractor the amount due within thirty (30) working days of City's receipt of such report	Thirty (30) working days of receipt	N/A
15.3	Report	Either or Both	Either or Both	May dispute findings of audit performed under 15.2.1 or 15.2.3 within thirty (30) days of receiving results and within 30 days following receipt submit additional information as required to correct audit	Thirty (30) days of receiving and thirty (30) days following receipt	N/A
15.3 a	Payment	City	Contractor	If report from additional information reflects Contractor is owed refund by City	City must pay within Thirty (30) working days	N/A
15.3 b	Payment	Contractor	City	If report from additional information reflects City is owed monies by Contractor then payment will include interest at the rate of eighteen (18%) per annum from the date when said payment should have been made	Contractor must pay within thirty (30) working days	N/A
15.6	Action	City	Contractor	Contractor shall be subject to unannounced operating audits of the Food and Beverage Service Facilities	Doesn't specify but on an as needed basis	Director
15.6	Notice	City	Contractor	Contractor shall be notified by the Director of conditions needing correction or improvements.	Contractor shall promptly comply with any such notice	Director

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
16.1	Action	Contractor	City	Advance approval of signs and graphic materials.	Doesn't specify but assume prior to display	Director
18.1	Action	Contractor	City	Consent of City, in writing, before any part of right or agreement is assigned, transferred, conveyed or disposed of.	Doesn't specify but assume prior to assignment	City
18.3	Notice	Contractor	City	Notice to Director of any changes of ownership in advance of the effective date of such change	No less than thirty (30) days prior to change	Director
18.5	Notice	Contractor	City	Prior written approval of all subcontracting opportunities by third parties (other than members of the Contractor)	Doesn't specify but assume prior to subcontract	Director
20.1	Report	Contractor	City	Quarterly Submission of a Good Faith Effort Plan to City EDD indicating subcontracting plan utilization levels	Quarterly commencing 2/1/05.	EDD
20.2	Report	Contractor	Director & EDD	Submission of a supplemental GFEP indicating efforts to resolve any deficiencies w/in 30 days	Not specified.	EDD
20.2	Payment	Contractor	City	If supplemental GFEP is not approved and approval is not given within ninety (90) days of initial denial a penalty on Contractor of \$1,000 per day will be applied until deficiencies are resolved	Ninety (90) days of initial denial	City
20.3	Report	Contractor	Director & EDD	Submission of a quarterly report outlining the participation levels of the Contractor's members and other subcontractors.	Quarterly	Director & EDD
20.5.1	Notice	EDD	Contractor	Written notice to Contractor of deficiencies in utilization levels.	Not specified.	EDD
20.5.1	Report	Contractor	EDD	Upon receipt of such notice contractor shall have 180 days to meet goals set in 20.4	180 days	EDD
21.1	Copies	Contractor	City	Copies of permits and licenses procured to conduct operations at the Center, City's Municipal Auditorium and Lila Cockrell Theater.	W/in ten (10) days of receipt	N/A

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

Section	Type of Requirement	From	To	Requirement	Time Frame	Approving Entity, if Any
24.1	List	Contractor	Director	List of all Contractor-owned and leased equipment brought on-site.	On or before Jan. 31 of each calendar year, commencing 1/31/06.	Director
24.3	Inventory	Joint		Annual joint inventory in order to verify correctness of Addendum I.	Annually on anniversary date.	N/A
24.3	Report	Contractor	City	Produce missing equipment or written plan for replacement	60 days from release of final inventory	None Specified
24.6	Notice	Contractor	City	Shall notify Director of any equipment failure that may adversely affect operations. Upon completion of repairs, a follow-up notice shall be sent.	Immediately.	Director
25.1(g)	List	Contractor	City	Shall provide list of all Contractor-owned and leased office equipment brought on site.	Annually on anniversary date.	Director.
28.1	Approval	City	Contractor	Contractor shall not in any manner use City's logo or Service Facilities for advertising, publicity, marketing or public relations purposes without City's prior written approval	Doesn't specify but prior to use	Director
29.1	Approval	Director	Contractor	Contractor shall not construct any modifications to facilities without the prior written approval of Director	Prior to modification	Director
33.1	Amendments	Both	Both	No terms of the Agreement modified unless done so in writing by Amendment, signed by same parties	When needed	City
34.1.a	Notice	City	Contractor	City shall give Contractor notice of default and a thirty (30) day time period to correct	When needed	N/A
34.1.b	Notice	City	Contractor	If City intends to terminate this agreement as a result of 34.1.a then City must give Contractor one (1) month written notice of such intention	When needed	N/A

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
34.2	Action	Either or Both	Either or Both	In the event of Termination a joint inventory and walkthrough will be performed of City-owned property and facilities to establish the existence and condition of all such items	Immediately upon termination of agreement unless transition period agreed to	N/A
34.3	Action	City	Contractor	In the event of Termination or expiration, City has option to purchase at fair market value some or all equipment owned by Contractor	Upon termination of agreement	N/A
34.4	Action	City	Contractor	If City determines that damages to facilities were done by Contractor (not found during inventory & walkthrough), the City reserves right to have Contractor pay for repairs	Within 30 days of termination of agreement	N/A
35.1	Notice	Either or Both	Either or Both	Both must notify in writing of any changes of address	Within 5 days of address changes	N/A
36.1	Action	Contractor	Director	Submit MBE Caterers Enrichment Plan	W/in 30 Days of Effective Date of Agreement	Director
36.2	Program	Contractor	Director	Contractors Scholarship Program	Approved and implemented w/in 30 Days of Effective Date of Agreement	Director
36.2a	Report	Contractor	Director	Donations to non-profit organizations of not less than \$100,000	March 1, Annually Commencing March 1, 2006	N/A
36.2b	Report	Contractor	Director	Scholarship Beneficiaries	March 1, Annually Commencing March 1, 2006	N/A
36.3	Program	Contractor	City	Implementation of internship program for local culinary/hospitality arts students.	W/in 30 Days of Effective Date of Agreement	Director

Addendum IV
Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
Comprehensive Report Schedule

<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
37.1	Report	Contractor	City	Contractor shall furnish City with a statement of sales and additional commission fees due in a format acceptable to City as specified in Articles XXXVIII and XLI.	W/in twenty(20) calendar days following the close of each accounting period	N/A
37.1	Action	City	Contractor	Written notice to Contractor when statement of sales not received by due date	Contractor has 2 business days to provide or a 10% penalty on the total due will be assessed	N/A
38.2.1	Action	Contractor	Director	Commission waivers, if any are given, must be approved in writing by Director	10% interest if not approved prior to event	Director
38.3	Action	Contractor	Director	Contractor shall not barter, trade or discount any services unless prior approval is received from Director	Prior to action	Director
38.4	Action	Contractor	Director	Contractor request prior written approval from Director for any additional charges to Customer of the Center	Prior to action	Director
38.7	Action	Contractor	Director	Director may waive commission for services invoiced to the City	Prior to event	Director
39.1	Action	Contractor	Director	Contractor may perform off-site catering services not associated with the performance of this Agreement with no commission due to City provided no Essential Mgmt. Staff or City-owned equipment is used without written consent of Director	Prior to event	Director
39.2	Action	Contractor	Director	Off site catering services requested by a Customer of the Center must be approved by the Director prior to submission of the proposal by Contractor to the Customer.	Prior to submission of the proposal by Contractor to the Customer	Director

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Henry B. González Convention Center
Food, Beverage and Concession Services Agreement
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<u>Section</u>	<u>Type of Requirement</u>	<u>From</u>	<u>To</u>	<u>Requirement</u>	<u>Time Frame</u>	<u>Approving Entity, if Any</u>
39.2	Action	Director	Contractor	Respond to Off-site catering request	W/in 2 business days of receipt or deemed approved	N/A
40.1.4	Action	Contractor	Director	All proposed licenses between Contractor and subcontractors shall be submitted to Director for prior approval	Prior approval	Director
40.2	Approval	City	Contractor	Must use approved City inventory sales method for concession operations. City shall have access to all sales and management reports.	Prior approval	City
40.3	Report	Contractor	City	Written summary of each Concession event to be provided.	W/in two (2) business days of the event.	City
40.4	Report	Contractor	City	Concession cash shortages	Monthly	N/A
40.5	Approval	Director	Contractor	Contractor may request to install vending machines in specified areas with prior written approval of Director	Prior to installation	Director
40.6	Action	Contractor	City	Contractor may authorize subcontractors or Customers of the Center to sell their own novelties	Prior approval	Director
40.6.4	Action	Contractor	City	Requests for deviations to Novelties commission percentages shall be in writing and approved by the Director	Prior to offering reduction	Director
40.7	Action	Contractor	Director	Contractor may engage in other concession activities as approved by Director	Prior to activity	Director
40.7	Action	Contractor	City	Approval to engage in other concession activities.	Prior to the activity.	Director. Must be in writing.
42.1	Action	Contractor	City	Contractor shall furnish City upon the effective date of this agreement a Performance Bond acceptable to City in amount of two hundred thousand dollars (\$200,000). Performance Bond is to be renewable annually on each anniversary date of this agreement	Annually on anniversary date.	City

Addendum V
RK Group Limited Liability Company
Percentage of Ownership

**NAMES, CONTRIBUTIONS AND
MEMBERSHIP INTERESTS OF MEMBERS**

NAMES AND ADDRESSES	INITIAL CONTRIBUTION	ADDITIONAL CONTRIBUTION	OPTIONAL CONTRIBUTION	MEMBERSHIP INTEREST
Catering By Rosemary, Inc. 1220 E. Commerce San Antonio, TX 78205	\$75,908.81	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	69.0001%
Manuel H. Garza, Jr.'s La Casita Enterprises, Inc. dba Catering By Nick 1715 N. Trinity Street San Antonio, TX 78201	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%
Black Tie Affairs Catering, Inc. 1515 Rogers Avenue San Antonio, TX 78208	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%
John Lopez d/b/a All Star Services 731 Mayfield San Antonio, TX 78211	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%
JAD Services, Inc. dba Absolutely Everything Catering Services 3915 San Pedro, San Antonio, TX 78212	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%
True Flavors, L.L.C. 715 Old Highway 90 West San Antonio, Texas 78237	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%
Chelsea's Sandwiches of Texas, Inc. 4538 Centerview, Suite 146 San Antonio, Texas 78228	\$5,683.26	Pro-rata share of Start-Up Costs, as defined in these Regulations.	From time to time, as determined by Majority in Interest of all Members.	5.1666%