

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

TO: Mayor and City Council

FROM: Michael J. Sawaya, Director of Convention Facilities

SUBJECT: An Amendment to the Food and Beverage Service and Concession Services Agreement with the RK Group L.L.C.

DATE: January 12, 2006

SUMMARY AND RECOMMENDATIONS

An ordinance authorizing an amendment to the Amendment and Restatement of the Henry B. Gonzalez Convention Center Food and Beverage Service and Concession Services Agreement between the City of San Antonio and the RK Group L.L.C. that will exclude Texas Alcoholic Beverage Commission mixed beverage gross receipts tax in the calculation of gross receipts, add areas that are assigned to the RK Group, clarify Small Business Economic Development Advocacy Program requirements, and address other miscellaneous clarification items in the Agreement.

Staff recommends approval of this ordinance.

BACKGROUND INFORMATION

The Amendment and Restatement of the Henry B. Gonzalez Convention Center Food and Beverage Service and Concession Services Agreement (Agreement) was approved by Ordinance #99968. The Agreement is for a five (5)-year term that commenced on February 1, 2005 and will expire on January 31, 2010. This Agreement, through an Option Term provision, is an amendment and restatement of the Henry B. Gonzalez Convention Center Food and Beverage Service Agreement (Original Agreement) that was authorized by Ordinance #85056 on October 24, 1996. The RK Group L.L.C. (Contractor), a successor to the interests of the RK Group Joint Venture from the Original Agreement, is granted the exclusive right to provide food & beverage and concession services at the Convention Center and Lila Cockrell Theatre, and exclusive concession services at the Municipal Auditorium.

In this Agreement, the gross receipts definition will be amended to reflect the agreement of both parties during negotiations that mixed beverage gross receipts tax would not be considered a deduction in the calculation of gross receipts. This is more fully described in the Fiscal Impact section below.

The requirement for a Cash Outlet Manager is being deleted. The City Finance Department has been consulted, and there is concurrence that sufficient controls are in place without the need for additional RK Group staff or expense for cash handling.

Addendum II to the Agreement sets forth areas within Convention Facilities that are assigned to the Contractor. Since commencement, various additional concession service opportunities have been discussed and an additional storage area was requested by the Contractor. There are four additional areas on the street level of the Convention Center that are being added as area's assigned to the Contractor.

As currently written, the Small Business Economic Development Advocacy (SBEDA) Program Article establishes reporting requirements to ensure that the Contractor meets the utilization levels that are established based upon the quarterly submittal of a Good Faith Effort Plan (GFEP). In consultation with the Economic Development Department, it has been determined that a quarterly report instead of a quarterly GFEP is appropriate for the Contractor to submit their utilization levels. A change to the Termination Section of the Agreement clarifies that defaults resulting from SBEDA follow the provisions of the SBEDA section and not the Termination Section.

The proposed amendment also addresses a variety of minor changes for clarification purposes and cleanup.

POLICY ANALYSIS

It is the policy of the City of San Antonio to maximize revenues. Clarification of the gross receipts definition will ensure that negotiated commissions will be collected.

FISCAL IMPACT

Approval of this ordinance will correct the definition of Gross Receipts as negotiated prior to the approval of the Agreement. The RK Group agreed to reimburse the City, upon amendment, for City commissions that resulted from the mixed beverage tax deduction since the Agreements commencement. The table below shows the amount of mixed beverage tax deductions and commissions due from February through October 2005 for a total commission due in the amount of \$25,703 for that period.

<u>Month</u>	<u>Mixed Beverage Tax</u>		<u>City Commissions</u>		<u>Total Commission Due</u>
	<u>Food & Bev.</u>	<u>Concessions</u>	<u>Food & Bev.</u>	<u>Concessions</u>	
Feb-05	\$7,618	\$714	\$1,905	\$250	\$2,155
Mar-05	\$21,140	\$2,428	\$5,285	\$850	\$6,135
Apr-05	\$14,302	\$2,541	\$3,576	\$889	\$4,465
May-05	\$12,847	\$338	\$3,212	\$118	\$3,330
Jun-05	\$9,812	\$311	\$2,453	\$109	\$2,562
Jul-05	\$4,285	\$263	\$1,071	\$92	\$1,163
Aug-05	\$2,851	\$2,752	\$713	\$963	\$1,676

Sep-05	\$1,494	\$427	\$374	\$149	\$523
Oct-05	\$14,019	\$539	\$3,505	\$189	\$3,694
Totals	\$88,368	\$10,313	\$22,094	\$3,609	\$25,703

Commission reimbursements will also be due for November and December 2005 (those figures have not yet been reported.)

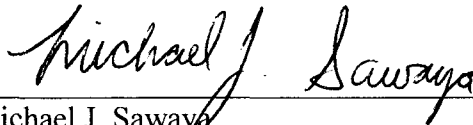
Commission estimates that were presented to the City Council during the approval of the Agreement included commissions on gross receipts without the reduction of mixed beverage gross receipts tax. Therefore, there is no change to projected and budgeted commissions for the five (5)-year term.

COORDINATION

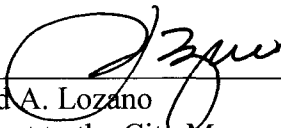
This item has been coordinated with the City Attorney's Office, the Office of Management and Budget, the Economic Development Department, and the Contract Services Department.

SUPPLEMENTARY COMMENTS

The required Discretionary Contract Disclosure Form is attached.



Michael J. Sawaya
Director of Convention Facilities



Roland A. Lozano
Assistant to the City Manager



Sheryl Sculley
City Manager

City of San Antonio
Discretionary Contracts Disclosure

*For use of this form, see Section 2-59 through 2-61 of the City Code (Ethics Code)
Attach additional sheets if space provided is not sufficient.*

(1) Identify any individual or business entity¹ that is a **party** to the discretionary contract:

RK Group, Limited Liability Company (LLC)

(2) Identify any individual or business entity which is a **partner, parent** or **subsidiary** business entity, of any individual or business entity identified above in Box (1):

☐ No partner, parent or subsidiary; or

List partner, parent or subsidiary of each party to the contract and identify the corresponding party:

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 dba Absolutely Everything Catering Services – Diane Cortez

True Flavors L.L.C – Johnny Hernandez

Chelsea's Sandwiches of Texas, Inc. – William Franklin, Joe Linson

(3) Identify any individual or business entity that would be a **subcontractor** on the discretionary contract.

☒ No subcontractor(s); or

List subcontractors:

(4) Identify any **lobbyist** or **public relations firm** employed by any party to the discretionary contract for purposes related to seeking the discretionary contract.

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. A sole proprietor should list the name of the individual and the d/b/a, if any.

☐ No lobbyist or public relations firm employed; or

List lobbyists or public relations firms:

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

(5) Political Contributions

List all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made 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 Box (1), (2), (3) or (4) above, or by the officers, owners of any business entity listed in Box (1), (2) or (3):

☐ No contributions made; If contributions made, list below:

By Whom Made:	To Whom Made:	Amount:	Date of Contribution:
Chelsea's Sandwiches	Art Hall	\$500	May 2004
Catering by Nick	Julian Castro	\$100	July 2004
True Flavors	Richard Perez	\$500	August 2004
True Flavors	Kevin Wolff	\$500	May 2005
Catering by Rosemary	Joel Williams	\$600	January 2005
Absolutely Everything	Julian Castro	\$613	June 2005
Absolutely Everything	Julian Castro	\$300	July 2005
Catering by Nick	Phil Hardberger	\$200	August 2005
True Flavors	Kevin Wolff	\$500	May 2005
True Flavors	Delicia Herrera	\$300	May 2005
True Flavors	Elena Juardo	\$200	May 2005
Black Tie Affairs	Cynthia Test	\$600	February 2005
Black Tie Affairs	Tommy Atkinson	\$500	February 2005
Black Tie Affairs	Catherine Torres-Stahl	\$500	February 2005
Black Tie Affairs	Linda Penn	\$500	March 2005
Black Tie Affairs	Carroll Schubert	\$500	April 2005
Black Tie Affairs	Ray Lopez	\$500	April 2005
Black Tie Affairs	Shelia McNeil	\$750	May 2005
Kaufman & Associates	Ron Segovia	\$600	August 2004
Kaufman & Associates	Kevin Wolff	\$1000	August 2004
Kaufman & Associates	Art Hall	\$500	Dec. 2004
Kaufman & Associates	Carroll Schubert	\$1000	January 2005
Kaufman & Associates	Ray Lopez	\$500	February 2005
Kaufman & Associates	Chip Haass	\$500	March 2005
Kaufman & Associates	Joel Williams	\$500	March 2005
Kaufman & Associates	Roger Flores	\$500	April 2005
Kaufman & Associates	Phil Hardberger	\$1000	May 2005
Kaufman & Associates	Ray Lopez	\$500	May 2005
Kaufman & Associates	Noel Suniga	\$500	May 2005
Kaufman & Associates	Chip Haass	\$500	June 2005
Kaufman & Associates	Sheila McNeil	\$500	June 2005

Kaufman & Associates	Art Hall	\$500	June 2005
Kaufman & Associates	Phil Hardberger	\$1000	June 2005
Kaufman & Associates	Kevin Wolff	\$500	Sept. 2005
B. Kowalski	Ray Lopez	\$500	February 2005
G. Kowalski	Patti Radle	\$500	March 2005
B. Kowalski	Kevin Wolff	\$500	April 2005
G. Kowalski	Chip Haass	\$500	April 2005
B. Kowalski	Ray Lopez	\$500	May 2005
G. Kowalski	Noel Suniga	\$500	May 2005
B. Kowalski	Phil Hardberger	\$1000	May 2005
G. Kowalski	Phil Hardberger	\$1000	July 2005
B. Kowalski	Kevin Wolff	\$250	Sept. 2005
G. Kowalski	Kevin Wolff	\$250	Sept. 2005
B. Kowalski	Carroll Schubert	\$1000	March 2005
B. Kowalski	Richard Perez	\$350	March 2005
B. Kowalski	Ron Segovia	\$500	March 2005
B. Kowalski	Joel Williams	\$350	March 2005
G. Kowalski	Carroll Schubert	\$1000	March 2005
G. Kowalski	Richard Perez	\$350	March 2005
G. Kowalski	Ron Segovia	\$500	March 2005
G. Kowalski	Joel Williams	\$350	March 2005

(6) Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city must disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 2-43 of the City Code (Ethics Code), ("conflicts of interest") by participating in official action relating to the discretionary contract.

☒ Party not aware of facts which would raise a "conflicts-of-interest" issue under Section 2-43 of the City Code; or

Party aware of the following facts:

This form is required to be supplemented in the event there is any change in the information 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, whichever occurs first.

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.

Signature:	Title: Greg Kowalski President/CEO Company or D/B/A: Catering by Rosemary, Inc.	Date: November 2, 2005
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