

## CONCESSIONS AGREEMENT CONVENTION & ENTERTAINMENT FACILITIES DEPARTMENT

THIS Concession Agreement (“Agreement”) made and entered into this \_\_\_\_ day of September \_\_\_\_\_, 2020, between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”), and ARAMARK Sports and Entertainment Services, LLC, a Delaware corporation authorized to do business in Missouri (“Concessionaire”).

WHEREAS City, owns, operates and maintains the Kansas City Convention and Entertainment Facilities Department (“CEF”), located in Kansas City, Missouri and

WHEREAS, City and Concessionaire desire to enter into this commission-based Agreement for the purpose of a food and beverage operation for CEF.

IN CONSIDERATION of the payments and mutual promises and covenants contained in this Agreement, City and Concessionaire agree as follows:

### DEFINITIONS

- A. For the purposes of this Agreement, the following words and phrases are defined and shall be construed as herein.
1. **“Accounting Period”** shall refer to Concessionaire’s four or five week fiscal periods of which there must be twelve within each calendar year, provided, occasionally there will be a six week accounting period and 53 weeks in a fiscal year.
  2. **“Agreement”** shall refer to this Concession Agreement for the Kansas City Convention and Entertainment Facilities Department.
  3. **“Alcoholic Beverages”** shall refer to all alcoholic drinks, beers and wines, regardless of where they are provided at the Premises, in what packaging or format, or to whom they are provided.
  4. **“Backstage Catering”** shall refer to provision of food and beverage to and purchased by athletic teams and organizations, promoters and/or performers and their staff to be consumed strictly in the private areas of the facilities that are reserved for their exclusive use. Backstage Catering is exempted from commission obligations under this agreement.
  5. **“Buy-out Option”** shall refer to signed agreement between Concessionaire and Licensee which authorizes Licensee to perform agreed upon services normally provided by Concessionaire.
  6. **“Catering Services”** shall refer to the operation of providing food and/or alcoholic beverages to a client that hosts prepared food and beverage and contracts, in writing, for specific Catering Services and menus to be served to

identifiable guests within the Premises. Food or beverage service that is rendered on a cash-and-carry basis to individual customers does not qualify as Catering Services.

7. **“Catering Food”** shall refer to the sale of food and related items on a non-cash hosted basis to include Exhibitor Sales.
8. **“Catering Liquor”** shall refer to the serving of liquor on a non-cash hosted basis to include Exhibitor Sales.
9. **“City”** shall refer to the City of Kansas City, Missouri, a constitutionally chartered municipal corporation of the State of Missouri,
10. **“Coat Check Services”** shall refer to the coat check services rendered by Concessionaire.
11. **“Concessions Alcoholic Beverages”** shall refer to the sale and service of alcoholic beverages from fixed or mobile concession stands, or by means of walking vendors or hawkers made in the Premises, regardless of place of sale.
12. **“Concessions Food”** shall refer to the sale and service of food, non-alcoholic beverages, candy, and tobacco from fixed or mobile concession stands, or by walking vendors or hawkers, including all portable cafeteria and lounge areas.
13. **“Concessionaire”** shall refer to ARAMARK Sports and Entertainment Services, LLC
14. **“Commission Fee”** shall refer to the compensation owed to City by Concessionaire in consideration of the rights and privileges granted hereunder, and in accordance with Exhibit A attached hereto and made a part hereof.
15. **“Concession Premises”** shall refer to that space in the Premises specifically designated for the use by the selected Concessionaire and identified and described as Kitchen Premises, Administrative Offices and Concession Stands in Exhibit B attached hereto and made a part hereof.
16. **“Concession Rights”** shall refer to the exclusive rights and privileges granted, by City, to Concessionaire under this Agreement to operate food, beverage and merchandise concessions at the Premises, more particularly described in Section 1.
17. **“CPI”** means the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor for “All Urban Consumers” in the table entitled “Consumer Price Index: United States City Average”, All items (1982-84=100), or any successor index thereto, for the year in question. In the event, that the CPI is converted to a different standard reference base or otherwise revised, the determinations to be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau of Labor Statistics or, if not so published, then the use of such conversion factor, formula or

table as may be published by Prentice-Hall, Inc. or any other nationally recognized publisher of similar statistical information

18. **“Director”** shall refer to the Executive Director of CEF, his designee or successor, who is authorized to determine compliance with the terms of this Agreement and to exercise all of City’s rights under the Agreement, except rights requiring appropriation of funds by City Council.
19. **“Equipment”** shall refer all foodservice furniture and machinery, except Leasehold improvements, used for receiving, storing, transportation and preparation for merchandising selling and accounting of product. Equipment shall not be affixed to the building except by electrical or gas connection.
20. **“Exhibitor Services”** shall refer to all food and beverage services to exhibitors of trade, convention or public shows for which Concessionaire shall have exclusive right of sales. Any and all Exhibitor Services shall pay commissions as outlined on Exhibit A.
21. **“GAAP”** shall refer to Generally Accepted Accounting Principles.
22. **“General Manager”** shall refer to the individual who will have general supervisory responsibility for Concessionaire and will be responsible for day-to-day operations, supervision of employees, and management and coordination of all activities associated with contracted events taking place.
23. **“Gross Receipts”** shall be defined as the total amount of money, gratuities, service charges, and subcontractor’s revenues (except that gratuities, service charges and subcontractor’s revenues shall be limited to gratuities, service charges, and subcontractor revenues actually received and retained by Concessionaire) and rental charges received or charged by Concessionaire, any agent, employee or any subcontractor for all sales, cash or credit (whether collected or not), with respect to the Services excluding Novelties, applicable sales taxes, gratuities and service charges not retained by Concessionaire (*i.e.*, paid to employees), credit/debit card transaction fees and charges and discounted sales.
24. **“Improvements”** shall refer to construction, refurbishment or decorations on the Premises and/or Concession Premises purchased and installed by Concessionaire, at its expense. 25. **“Investment Plan”** shall refer to a financial commitment from Concessionaire to City to allocate an initial investment not to exceed Seven Hundred and Fifty Thousand Dollars (\$750,000) for the purchase of equipment and improvements in connection with the Services at the Premises in accordance with Section 1.7.
26. **“Leasehold Improvement”** shall refer to all fixtures, furnishings, finished and construction affixed to the Premises by more than electrical or gas connection.
27. **“Licensee”** shall refer to events held in Premises and the designated person responsible for the administration of each event.

28. **“MBE/WBE”** shall refer to Minority Business Enterprises and Women Business Enterprises.
29. **“Novelties”** shall refer to souvenirs, programs, T-shirts or sundries sold from stands or by walking vendors.
30. **“Other Income”** shall refer to income derived from authorized special advertising or services and unique sales.
31. **“Premises”** shall refer to the existing properties consisting of the Kansas City Convention Center, Municipal Auditorium (including the Municipal Arena, Music Hall, Little Theatre), as more particularly set forth on Exhibit D, attached hereto and made a part hereof, and any designated additional exhibit or meeting space that may be constructed by City.
32. **“Smallwares”** shall refer to the service ware, utensils, crockery glassware, dishware and cutlery used in the Food Services (as defined below).
33. **“Term”** shall refer the term of the contract shall begin on September\_\_\_2020, as executed by the City and shall continue in effect for a period of six (6) years. At any time prior to the expiration of the initial term or any subsequent term, the City, in its sole discretion, may renew this contract for up to two (2) additional two (2) year terms.

## **Section 1. RIGHTS AND PRIVILEGES OF CONCESSIONAIRE AND SERVICES TO BE PERFORMED.**

### **1.1. Rights**

- A. **Exclusivity.** Concessionaire shall have the exclusive rights within the Premises to provide the following services (“Food Services”) for the following:
  1. Commencing September \_\_\_\_\_, 2020, the sole and exclusive right for the service and sale of alcoholic beverages to the extent permitted by applicable law and regulation. To the extent permitted by applicable law, approved caterers may pour wine at tables in conjunction with a sit-down catered event.
  2. Director will have final approval of pricing of menus for concessions and associated costs of hosted and cash bars.
  3. The cash sale of food and beverage (including temporary or portable locations).
  4. The provision of food and beverage to all exhibitors participating in trade, convention, and public shows within the Premises shall be qualified as “Exhibitor Services”.
  5. The sale of food and beverages by walking vendors at the Premises.

6. Concessionaire shall have the right to provide wardrobe checking on an exclusive basis.
7. The sale of Novelties sold from stands or by walking vendors.

**B. Exceptions to Exclusivity.** Notwithstanding anything in this Agreement to the contrary, Concessionaire's Concession Rights shall be subject to the following exceptions:

1. General Manager may grant an exception to any exclusive service defined herein in writing to Licensee with a signed copy given to the Director or his designee. Should the General Manager and Licensee fail to agree to buy-out conditions and price, the Director will define the terms of the buy-out, notwithstanding Section 8b of this subsection.
2. Concessionaire agrees that alcoholic beverages will not be sold at its stands or bars when a licensee of the Premises has an agreement with City that alcoholic beverages will not be sold for all or for specified periods within its license term at the Premises.
3. Concessionaire is the preferred caterer at the Premises and the CEF shall refer business to Concessionaire, however, Concession Rights granted herein shall not be inferred, implied, or construed to prevent or prohibit either City or any of its licensees, tenants or lessees from engaging the services of an approved caterer of its own choosing for Catering Services; provided however, that such caterers shall not be permitted to use Concessionaire's Equipment unless approval of a Buy-out Option has been signed by Concessionaire's General Manager, notwithstanding Section 8b of this subsection.
4. Concession Rights granted herein shall not be inferred, implied, or construed to prevent or prohibit an exhibitor in a convention, trade show or event, public or private, from distributing, without charge, samples of bite size food one (1) oz each and beverages of three (3) ounces or less. Beverages or merchandise items which are manufactured and distributed in the normal course of the exhibitor's business or with the approval of the Director, shall not be restricted from selling packaged food items for consumption, off the Premises. No sampling of liquor will be allowed and alcoholic beverages shall only be distributed or served through Concessionaire, except as may otherwise be determined and approved by the Director.
5. Backstage Catering in performance areas, employee and/or athletic dressing rooms are excluded from this Agreement, unless the client requests Concessionaire to perform such services and Concessionaire agrees to provide such services. Concessionaire will provide backstage catering at a price equal to the associated direct costs incurred by Concessionaire and, in such case, City will not receive additional catering commission from the Concessionaire.
6. Concessionaire shall be required to suspend or modify its operations at the direction

of City, if City determines it is in its best interest; provided, however, that none of Concessionaire's Equipment and/or labor shall be utilized by licensees of City when Concessionaire is excluded from providing said services including the sale of ethnic foods, not normally sold by Concessionaire, community and international festivals, or the sale of specially prepared foods, such as kosher foods, for particular gatherings.

Provided further, such licensees of City shall be subject to a Buy-out Option waiver fee to be determined by mutual agreement of Concessionaire and City. The waiver fee shall be shared equally by Concessionaire and City. The Director has final discretion in the event that an agreement for the Buy-out Option is not executed in a timely manner.

7. Concessionaire agrees to make no arrangement with anyone for exclusive sale of any item in the Premises without the written permission of the Director.
8. Novelties:
  - a. The Concession Rights granted herein shall not be construed to prevent or prohibit trade with, fraternal, civic educational, charitable religious associations, organizations or major touring shows, at the sole discretion of the Director, from selling during their events, programs used for their events and or novelties copyrighted to and exclusively sold by, including but not limited to, such groups and organizations as the, Broadway Across America, Women's Big 12, NAIA, MIAA. In such events, Concessionaire shall have no right to revenues from such sales unless Concessionaire has entered a consignment contract with event sponsors to sell such Novelties on their behalf.
  - b. City shall have the right to intervene in consignment contract negotiations between such event sponsors and Concessionaire and require Concessionaire to sell novelties under a commission split to be determined by the Director.
  - c. For all other type of events, Concessionaire, City, and consignors of Novelties shall mutually agree upon the method of sales and commission fee split.
  - d. Concessionaire agrees to make no arrangement with anyone for exclusive sale of any item in the Premises without the permission of the Director.
9. To the extent permitted under applicable law, the Director may waive, in writing, exclusivity to the pouring of alcohol by Concessionaire when it is in the best interest of the City or Concessionaire is unable to effectively meet customer demands for a particular event. In such cases, Concessionaire will waive its right to pour alcohol.

## **1.2 Occupancy of Premises**

- A. Liquor License: All licenses and permits required for the sale of Alcoholic Beverages on the Premises shall be held in the name of Concessionaire. Concessionaire shall keep all permits in full and legal force and effect at all times. Neither party shall take any action, which would impair Concessionaire's ability to hold permits. Concessionaire shall prepare, file, and process all applications for renewals, and the costs of permits are the sole responsibility of Concessionaire.
- B. Independent Contractor. Concessionaire shall at all times be considered an independent Contractor, and this Agreement with City shall not imply, infer, create or form a partnership, joint venture, or other corporate arrangement with City.
- C. Use of Premise:
  - 1. Concessionaire shall have the right to the uninterrupted use of Premises as set forth in this Agreement and in accordance with applicable laws and regulations of City.
  - 2. Should Premises be disrupted over the Term of this Agreement by remodeling or the construction of additional facilities, acts of God, National or Local State of Emergencies, pandemics, such disruptions shall not constitute grounds for financial responsibility, grievance or default against City.
- D. Conduct of Other Business: Concessionaire shall use Concession Premises solely for the transaction of business directly related to the obligation(s) of this Agreement. Catering and cash sales of food and beverage will not be sold or served off premises without prior approval from City, which approval shall not be unreasonably withheld. Concession Premises shall not be used for sales or any other services as part of or related to any other business owned, operated or participated in by Concessionaire.
- E. Novelties or other merchandise produced, marketed, sold or stored on or in the Premises must not be sold off premise, without the prior written approval of the Director.
- F. Concessionaire shall accept the Premises in an "as is" condition.

## **1.3 Hours of Operation.**

- A. Except as otherwise provided in this Agreement, Concessionaire agrees to provide all required services in accordance with the Concession Rights granted herein when any event or attraction is scheduled within the Premises, unless approval not to provide such services is granted by the Director. Concessionaire and the Director will mutually agree upon the timeframe which the food and beverage stands will be open for service, number and type of food and beverage stands or facilities to be operated for and during any scheduled event.
- B. Concessionaire shall have the Concession Premises open and in operation at a reasonable time before, during and after all events, as determined by the needs of the event and/or

request of the Director. Concessionaire will open and operate stands to comply with event activity. At no time shall Concessionaire close food service prior to the event closing time without agreement from the Director.

- C. Concessionaire shall, at no additional cost to Concessionaire, at the request of the Director, agree to operate a refreshment stand or stands for the benefit of workers or other persons preparing for an event.

#### **1.4. Cancellation, Termination or Interruption of Event**

Concessionaire understands and agrees that City reserves the right, in its sole discretion, to cancel, interrupt or terminate any performance, lecture, event, (public or private), regardless if admission has or has not been charged. Concessionaire hereby agrees, that it will not make, against City, any claim for damages to Concessionaire arising out of any lawful act of City, its officers, agents, employees, or representatives.

#### **1.5. Maintaining Temporary or Permanent Food Locations**

- A. Concessionaire and City shall agree upon the location of all temporary and portable food stands within and/or around the Premises.
- B. Concessionaire shall acquire no rights to locations of temporary or portable concession and/or food stands, except as may be approved from time to time by the Director. City reserves the right to require Concessionaire to move temporary or portable concession and/or food stands and Equipment when needs of events within the Premises so require.
- C. Concessionaire shall furnish, at its own expense, all labor, equipment, utilities, and supplies for the moving, setting up, and dismantling of temporary or portable concession and/or food stands placed in such locations as approved by the Director. Concessionaire shall properly and safely store stands in areas assigned them by City.
- D. Concession and/or food stand space shall be used exclusively for display of merchandise for sale; all under counter or adjacent storage room areas shall be used only for the supply and replenishment of said merchandise.
- E. Concessionaire shall keep neat, clean and in sanitary condition, all assigned areas of, in and around the Premises within a ten feet (10') radius of a fixed temporary concession stand or dining area. If Concessionaire sets up a portable cafeteria with tables and chairs or temporary seating area, Concessionaire shall be responsible for set up and tear down of all Equipment and shall be responsible for cleaning and maintaining such area, including all refuse, rubbish, litter, obstruction or any other nuisances. Concessionaire shall maintain these areas and/or receptacles during events as required, to keep said areas neat, sanitary and clean. Concessionaire shall sweep, mop or scrub the floors in all said areas, as necessary, to maintain cleanliness and sanitation. Trash, garbage or refuse handling standards established by law and/or by the Director may require the use of special devices including, but not limited to, special containers and wet garbage disposal systems. Concessionaire agrees to promptly provide and install said devices and to abide by all applicable laws, regulations and standards. If City is requested to clean



up any of the concession areas, the City will invoice Concessionaire for reasonable labor and supervisory costs.

- F. Concessionaire agrees to cooperate with the Director, to reduce energy cost and implement savings measures established by the Director. Concessionaire shall make certain that all Equipment and lights are turned off in concession stands, kitchen, storage areas and offices, when not in use.
- G. Grease removal in temporary or permanent locations shall be arranged for and provided by Concessionaire, in accordance with all applicable laws and regulations, to avoid collection, spillage, and attraction of pests. All new equipment purchased shall be “Energy Star” rated.
- H. Where the size or nature of any function requires additional waste containers, the cost for delivery of the container and associated trash removal are the sole responsibilities of Concessionaire; provided, however, City shall bear any additional cost of trash removal in the event other Approved Caterers or City uses those dumpsters on the Premises.
- I. Concessionaire agrees, for all catered events, to comply with City’s terms and conditions for open catering contracts issued to all CEF “Approved Caterers,” , City will provide to the Concessionaire a copy of its open catering contract. Any deviation by the Concessionaire from the City’s open catering contract form must be approved by the City in writing. Concessionaire will be required to follow the adopted open catering commission rates. This rate structure has been defined as 30% of gross receipts for the supply and serving of alcoholic beverages and 18% of gross receipts for labor/gratuity service charge, catering of food, non-alcoholic beverages and services directly related to serving thereof, and equipment or other related services and rental fees.

City shall provide carted, pallated or stacked tables for catered events as outlined in Catering Agreement prior to the event. Concessionaire shall maintain and clean the space inside the perimeter of the room throughout the duration of the event. City shall, at Concessionaire’s request, perform minimal overnight cleaning in such catering space and will invoice Concessionaire for reasonable labor and supervisory costs. Concessionaire is responsible for any cleaning due to food, drink, food serving or food preparation.

#### **1.6. Receiving Dock**

- A. Concessionaire shall maintain, on a continuing basis, the section of areas around the assigned dock where deliveries are made and will be responsible for the return of all pallets, storage containers, linens, and other equipment used in the conduct of operations under its control.
- B. All trash and garbage receptacles, utilized exclusively by Concessionaire, will be cleaned and sanitized by Concessionaire to insure the highest standard of sanitation and cleanliness. Concessionaire shall order trash removal from containers located in the Dock A of the Premises, and cost of such trash removal shall be borne by City.

This area must be cleaned by the Concessionaire on a regular basis.

- C. Concessionaire is responsible for accepting all deliveries to and/or for Concessionaire's operation and, to the extent possible, shall schedule deliveries to occur outside event activities scheduled within the Premises.

#### **1.7. Improvements and Equipment**

- A. Investment for Equipment and Improvements: In consideration of the rights granted to Concessionaire hereunder, Concessionaire shall make an investment (the "Initial Investment") in an amount not to exceed seven hundred and fifty thousand (\$750,000) dollars to be used for the purchase of mutually agreed upon equipment and improvements with the services at the Premises. All purchases by Concessionaire must be approved in advance in writing by the Director, which approval shall not be unreasonably withheld, conditioned or delayed.
- B. Purchase of Equipment: All Equipment and Smallwares, prior to being purchased by Concessionaire, shall be approved by the Director. Copies of all invoices, submitted together with detailed data supporting its acquisition and cost, should be submitted to the Director immediately upon delivery and added to City's Equipment inventory list.
- C. Construction and Installation of Improvements:
  - 1. Concessionaire shall purchase and install only new fixtures, furnishings and concession equipment on the Premises throughout the term of this Agreement, unless otherwise previously approved, in writing, by the Director. All facilities, fixtures and any temporary or portable concession stands will be of at least equal quality in appearance, to those permanently installed or in possession of City.
  - 2. City will furnish to Concessionaire information on design criteria and standards for the Concession Premises. All construction and improvement plans, specifications, proposals, materials, colors and designs shall be submitted to City for approval and Concessionaire shall not commence the construction or installation of any Improvements on the Concession Premises without the prior written approval of City, in addition to proper City, State, and Federal permits as applicable. All proposed additional improvement plans shall be submitted and approved in the same manner over the Term of this Agreement.
  - 3. Concessionaire shall and shall cause its construction Concessionaire to comply with all terms and provisions of City codes, ordinances and "General Conditions of the Contract for Construction".
- D. Certificates of Completion: Upon completion of the Improvements, Concessionaire shall submit to the Director a copy of its acceptance letter certifying completion and a certified copy of any certificate or permit which may be required. The cost of Improvements shall be verified by receipts/invoices, which shall be remitted to City concurrent with the Certificates of Completion. The cost of Improvements shall be actual receipt or invoice cost and shall not include Concessionaire overhead or other expenses, except as otherwise

provided herein.

### **1.8. Title to Improvements and Equipment**

- A. All Improvements installed by Concessionaire and all future improvements, equipment or fixtures made, installed or purchased by Concessionaire shall become the property of and be turned over to City upon City's satisfaction of its Termination Payment obligation to Concessionaire as set forth in Section 1.12 hereof or the complete amortization of the Investment. Notwithstanding any language to the contrary herein, Smallwares shall remain the property of Concessionaire.
- B. City shall retain title to all City equipment..All fixtures taken out of service shall immediately be turned over to City.
- C. Concessionaire shall provide to Director a complete inventory of Concessionaire's equipment for the Term, together with detailed data supporting acquisition and cost of Concessionaire's Equipment.
- D. Should Concessionaire and City agree to an amount of additional investment to be made by Concessionaire, all construction specifications submitted, terms, and conditions shall be subject to an amendment to this Agreement.
- E. A copy of Concessionaire's inventory of equipment and invoices for additional purchases must be provided to City so that Concessionaire's inventory schedules may be kept current.

### **1.9. Mutual Approval of Improvements:**

Concessionaire and City agree and acknowledge that flexibility in the style, design, placement, priority, and scheduling of the Improvements (within the Investment Plan) is necessary in order to achieve maximum financial return to the parties, and in order to achieve the intent of this Agreement. However, the final design, style placementpriority and scheduling of the Improvements shall be mutually agreed upon by the parties, which approvals shall not be unreasonably withheld.

### **1.10. Premise/Equipment Maintenance**

- A. Representatives of City and Concessionaire shall evaluate the condition of the Premises, including, but not limited to, furnishings and existing Equipment. An annual, joint review by City and Concessionaire will be conducted and City shall prepare a written report of conclusions. Concessionaire shall make every reasonable effort to adopt said recommendations within its repair and maintenance budget.
- B. Concessionaire agrees to contract with a company for preventative maintenance on all Equipment.

- C. Concessionaire shall be responsible for the purchase of all non-capital, event related maintenance supplies and equipment.
- D. Concessionaire shall maintain maximum safety measures and protocol for all food handling in service areas within the premises, including, but not limited to, its occupants and equipment.
- E. Concessionaire agrees to keep the equipment, improvements, fixtures and Concession Premises clean.
- F. Concessionaire shall not erect, maintain or keep at the Premises any structure or equipment of any kind, except as approved within this agreement and with the written consent of City. Concessionaire shall not make any alteration in, or additions to, nor post any sign upon, any part of the Premises, nor permit signs to be posted for advertising of services of any nature, on Concessionaire's Premises without prior written permission from the Director.

#### **1.11. Inventory**

##### **A. Equipment**

- 1. All fixtures belonging to City and taken out of service shall immediately be turned over to City.
- 2. Any property of City damaged or broken due to Concessionaire's negligence will be the sole responsibility of Concessionaire to replace or reimburse City.

**B. Annual Inventory:** City will require Concessionaire, at its expense, to conduct an annual inventory and condition rating of all equipment belonging to City. This inventory shall include a database and field inventory of kitchen Equipment including, but not limited to, appliances, prep tables, smallwares, concession and food stand Equipment. Any alternative method of inventory shall be determined upon mutual agreement of the parties.

**C. Par Levels:** Concessionaire shall maintain par levels of all equipment, Leasehold Improvements, uniforms and Smallwares determined by mutual agreement of the parties. At the expiration or termination of this Agreement all City's Equipment shall be returned to City in the same number and condition, with the exception of normal wear and tear as of the Effective Date.

**D. Removal:** Concessionaire shall not remove any article piece of equipment, utensil, or other item furnished by City, for any reason, without the prior, express written permission of the Director.

#### **1.12. Contract and Inventory Buy-out**

**A. Amount.** Upon the expiration of the Term, or in the event this Agreement is

terminated by either party (including, but not limited to, the uncured default of a party) prior to the expiration of the Term, City shall pay or shall cause its successor concessionaire to pay, unconditionally and with the right of set-off, to Concessionaire a payment (the "Termination Payment") in an amount equal to the unamortized balance of the Investment, notwithstanding Section 16.8 of this Agreement, together with all other undisputed amounts then payable or to become payable by City to Concessionaire, subject to appropriation by City Council of Kansas City, Missouri.

- B. **Time of Payment.** The Termination Payment shall be paid to Concessionaire not later than thirty days prior to the date of expiration or termination of this Agreement. City's payment of the Termination Payment shall be a precondition to the effective termination of this Agreement by City.
- C. **Remedies.** In the event that Concessionaire does not receive the Termination Payment from City or City's succeeding concessionaire at the time provided therefore, Concessionaire may, at its option, exercise the following remedies: (i) remain at the Premises; (ii) continue to provide the Food Services; (iii) or withhold all payments otherwise payable to City until Concessionaire has recovered all amounts owing.

### **1.13. Utilities and Environmental**

#### **A. Utilities**

1. Concessionaire shall use reasonable care to avoid waste of utilities and energy. Concessionaire will cease use, upon notification of City, of materials or processes, which violate contamination or pollution control ordinances, and regulations of governmental agencies authorized to issue or monitor it. The cost of repair or replacement of any utility service or plumbing lines due to Concessionaire's negligence shall be borne by Concessionaire. City shall be responsible for maintaining sewer lines, unless Concessionaire's negligence shall have been the cause necessitating such maintenance, repair or replacement.
2. The cost for an installed telephone system shall be the responsibility of Concessionaire. City will provide Concessionaire with an extension of the City-installed phone service.
3. City shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God or other work stoppage, federal, state, or local government action, the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement or enlargement thereof, or any act or condition beyond its reasonable control. Further, City shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.

#### **B. Environmental**

1. **Hazardous Materials.** Concessionaire shall not store, use or dispose of any hazardous materials on the Premises, except those used in the ordinary course of normal retail operations, unless Concessionaire first secures the written authorization of City and complies with all applicable laws and regulations (EPA, MDNR, etc.) and any reasonable conditions City may impose, including the submission to City of all Material Safety Data Sheets (MSDS) for the hazardous materials to be used and/or stored.
2. **Environmental Remediation.** City acknowledges and warrants that Concessionaire shall not be liable for or required to remove, remediate and/or manage any hazardous substance located on any portion of the Premises, or coming on the Premises from sources off the Premises, except for any hazardous substances resulting solely and directly from Concessionaire's activities under this Agreement.
3. **Recycling Program.** Concessionaire agrees to cooperate with any recycling program instituted by City; costs for incurring this expense would be negotiated between Concessionaire and City.

#### **1.14. Consumable Merchandise**

##### **A. Pricing of Merchandise**

1. The Manager of Concessionaire's operations and a representative of City shall consult regularly, with reference to operations of Concessionaire. They also will meet annually for the purpose of discussing prices then in effect for various items sold by Concessionaire. City will have final approval of all prices, portions, brands, source of supply and quality, which approval shall not be unreasonably withheld.
2. Prices of merchandise for sale shall not be higher than those charged for the same quality merchandise at comparable facilities. A survey of other comparable facilities will be conducted by Concessionaire and submitted to City for review. Concessionaire shall meet with the Director and periodically (at least two times per year) review the general price structure of all commodities sold and may, by agreement in writing, for good cause shown, increase or decrease the price and any article(s) to be offered for sale.
3. Concessionaire must properly post prices on displays provided in fixed concession and/or food stand locations, as well as at all other points of sale and on vendors' Equipment and/or uniforms. Permanent display signs for merchandise and services shall not be gaudy or offensive and the final design and location of all posted prices and signs shall be subject to the approval of the Director.
4. If Concessionaire desires to offer for sale an article not included in an approved price schedule, or stop offering for sale an included article, written approval of the Director must be obtained.

##### **B. Purchase of Merchandise.** Concessionaire agrees to make a good faith effort to purchase

merchandise and supplies for the concession operations from purveyors and suppliers located within the Kansas City Metropolitan Area, and in accordance with the MBE/WBE list of approved vendors approved to do business with City, provided that the prices, quality and deliveries of the merchandise and supplies are equal to the prices, quality and delivery obtainable elsewhere by Concessionaire.

- C. **Quality.** Concessionaire will offer customers food, drink and other consumable merchandise of first and standard quality. Consumables shall be wholesome and meet all applicable and appropriate regulations. No expired products shall be served or sold. No limitations, adulterated or misbranded articles shall be sold or kept by Concessionaire. All merchandise kept for sale shall be subject to inspection and approval or rejection by the Director and/or duly authorized representatives of appropriate City Departments and/or government agencies.
- D. **Alcoholic Beverages.** Concessionaire shall offer for sale, alcoholic beverages to the extent permitted by applicable state and local laws, and subject to rules and regulations established by City. Final decision as to whether or not alcoholic beverages may be sold at an event or in any designated area of the Premises shall be the sole responsibility of City. The decision to serve or refuse service of alcoholic beverages to any individual shall be the sole responsibility of Concessionaire. All licenses and permits required for the sale of alcoholic beverages at the Premises shall be held in the name of Concessionaire. Concessionaire shall keep the permits in full force and effect and neither party shall take any action, which would impair Concessionaire's ability to hold the permits. Concessionaire shall prepare, file, and process all applications for each term's renewal at its expense.

#### **1.15. Non-Consumable Merchandise**

Non-consumable merchandise to be offered for sale shall be approved, together with prices, by the Director. Non-consumable merchandise shall be sold only at such times and in such locations as approved by the Director.

#### **1.16. Beverage Container Restrictions**

All beverages, to be consumed on the Premises, shall be sold in paper or plastic cups. If plastic cups are used, the Director must approve material selected. Walking vendors shall use leak-proof baskets or containers, and exercise caution to prevent the scattering of bottle caps, wrappers, napkins or other items on the Premises.

#### **1.17. Wardrobe Checking Service**

Concessionaire will have the right to operate a wardrobe service on an-exclusive basis subject to terms based upon mutual agreement of the parties.

#### **1.18. Personnel**

##### **A. Access to CEF**

1. Concessionaire shall be entitled to a reasonable number of employees on the Premises to adequately service clients, exhibitors and the public working or attending events on the Premises. Concessionaire's employees will be allowed free access to their assigned areas within the Premises, in accordance with security regulations established by City. City reserves the right to designate a specific entrance be used by all Concessionaire's employees. Depending on the nature of the event activity, this designated entrance may change from time to time.
2. The Director reserves the right to deny entry to any person employed by Concessionaire in the exercise of this Agreement.
3. All personnel employed by Concessionaire shall be neat, clean, and courteous at all times, shall abide by all applicable laws and the rules and regulations of the Premises and shall wear appropriate uniforms and a badge with the employee name or number legibly imprinted. The type and design of the uniforms and identification badges are subject to the approval of the Director. If Concessionaire's employees are not required to wear uniforms, they must wear identification badges at all times, and all attire will be neat, clean, and appropriate.
4. Concessionaire agrees to employ personnel with appropriate qualifications and experience and in sufficient numbers to provide all the services subject to the Concession Rights granted herein. City shall have the right to approve all of Concessionaire's personnel, including Concessionaire's General Manager, and the right to prohibit such personnel's access to the Premises and replaced in a timely manner with sufficient cause and to the extent permitted by law. Concessionaire shall not employ anyone under the age of sixteen (16) years.
5. Personnel must include skilled labor to stock, setup, dismantle and move equipment as needed.
6. When any employee of Concessionaire conducts himself in an improper or offensive or disrespectful manner, and fails to observe the standards set for all personnel, upon request of the Director, and/or his/her designee, such employee will be immediately removed from the Premises.
7. All foodservice personnel are employees of Concessionaire and not City. Concessionaire shall at all times be an independent Concessionaire and this Agreement shall not in any way create or form a partnership or joint venture with City. No agent, servant, or employee of Concessionaire shall under any circumstances be deemed an agent, or representative of City.
8. Concessionaire will establish standard staffing levels for all food service locations and events subject to prior approval of City. If City desires staffing levels in excess of the approved standard for an event, the commission rates for such event will be adjusted to compensate Concessionaire for incremental labor costs. If, in the opinion of the Director, insufficient personnel are assigned to any event, he may require Concessionaire to promptly add sufficient personnel to service the patrons.



adequately, either prior to or during an event.

**B. Personnel Training/Conduct**

1. **Personnel.** Concessionaire's employees shall furnish good, prompt and efficient service adequate to meet the demands of all users of the Premises. All personnel shall conduct themselves in a first class manner in accordance with the best practices in the food and beverage industry and shall comply with City's maximum standards with respect to service, health sanitary and safety measures.
2. **Training.** Concessionaire must conduct regularly scheduled training sessions for all personnel. At a minimum, training sessions must include alcoholic beverage awareness, customer service techniques, safe food handling, sanitation and health programs, money handling and effective merchandising.
3. **Supervision.** Concessionaire's operations shall be personally supervised at all times by competent and qualified managers or qualified subordinates in the manager's absence.

**1.19. Advertising**

**A. Advertising Guidelines**

1. **Advertising Rights.** All advertising on Premises belongs to City. Concessionaire shall not advertise any brand names on the Premises without the written approval City.
2. **Logo.** Concessionaire shall not use the name or logo of the City on any material without the written approval of City. City may require Concessionaire to use specially designed logo on sales material, menus, cups, napkins, and other material.
3. **Advertising Sales.** City may sell advertising and sponsorship packages for the Premises, which may include product availability rights; therefore Concessionaire must get final right of approval from City on all sources of product supply. Concessionaire retains no advertising rights nor is any advertising allowed on any of Concessionaire's or third party equipment unless approved by City. To the extent applicable law permits Concessionaire to do so, Concessionaire shall (a) purchase products and utilize suppliers designated by City and (b) feature and sell the products of City's sponsors and advertisers so long as any difference in the price between these products and similar quality products preferred by Concessionaire shall be applied as a credit against commissions otherwise payable to City.
4. **Signage.** Concessionaire agrees that no signs, advertising displays, or exterior decorations shall be painted on or erected in any manner upon the Premises without the prior written approval of City. All such signs shall conform to reasonable standards established by City with respect to wording, type, size, design, color

and location. A concise written description of signage, along with a brief artist's rendering and proposed color scheme shall be submitted to City for review and approval. During all events Concessionaire shall post signs and provide menus advertising the price of items offered for sale.

5. **Catering Rights.** Nothing in these guidelines shall be construed to prohibit Concessionaire from soliciting business for Catering Services in a manner approved by City.

## **1.20. Marketing**

- A. Concessionaire shall accrue to a marketing reserve fund (the "Marketing Reserve Fund") a sum equal to one and one half percent (1.5%) of the previous month's Gross Receipts. . These funds shall be deposited in a separate fund, by the twentieth (20th) day of each month of each Agreement year. The Marketing Reserve Fund may be utilized for the provision of an annual Catering, Marketing and Sales Program and customer appreciation initiatives, with specific operational and financial goals and methods for achieving those goals, provided that City and Concessionaire mutually agree to do so, and provided further that there are sufficient funds in the Marketing Reserve Fund. Upon the expiration or termination of the Agreement, Concessionaire shall remit to City the then outstanding balance of the Marketing Reserve Fund.
- B. No payments by Concessionaire for the Marketing Reserve Fund shall reduce Gross Receipts for purposes of calculating the Commission Fee due City or shall in any manner reduce the compensation due City.
- C. Should Concessionaire desire to access City's Booking System (Ungerboeck) for viewing purposes only, Concessionaire shall be responsible for all installation costs. Upon request, City shall provide a price quote for this service to Concessionaire.

## **1.21. Commissions**

- A. **Commissions.** In consideration of the rights granted to Concessionaire as set forth in this Agreement, Concessionaire shall pay to City the Commission Fee. See Exhibit A.
- B. **Adjustment to Commissions.**
  1. In the event Concessionaire is materially curtailed or prohibited completely from offering alcoholic beverages for sale at the Premises (other than as a result of the fault of Concessionaire), Director and Concessionaire shall promptly negotiate in good faith to determine an equitable adjustment in the commission rates to compensate Concessionaire for the effect of such prohibition. The amount of the adjustment shall be negotiated and determined to provide Concessionaire with the continued ability to receive a fair and reasonable rate of return for the duration of the prohibition.
  2. In no event will Concessionaire invoice a reduction in the Concession Commission Fee or the Catering Commission without express approval from the Director prior

to the service to be performed.

#### **1.22. Time of Payment**

- A. **Statement of Gross Receipts; Payment:** By the twentieth (20th) day of each month following the end of each Accounting Period, Concessionaire shall provide City with a statement of Gross Receipts for such Accounting Period. Each statement of Gross Receipts shall itemize commissions and Gross Receipts among the Premises and in accordance with the different categories of Gross Receipts and commissions set forth in Exhibit “A”.
- B. **Annual Statement:** Within thirty (30) days following the end of each Contract Year, Concessionaire shall provide to City a statement of Gross Receipts for the previous twelve Accounting Periods.
- C. **Books and Records:** Concessionaire shall maintain accurate books and records in connection with its Concession Services and shall retain such records for a period of at least three (3) years following the conclusion of each Contract Year. City shall have the right, upon reasonable notice being given to Concessionaire, to review and audit Concessionaire’s records of Gross Receipts.
- D. **Record Keeping:** Concessionaire shall use such cash registers, sales slips, invoicing machines and other automatic counting equipment as it deems necessary to properly and accurately record all Gross Receipts from the Concession Services. Such equipment and records shall be subject to the reasonable approval and inspection of City during regular business hours.

#### **1.23. Monthly Report**

Concessionaire agrees to provide to the City, due on or before the twentieth (20th) day following each Accounting Period during the Term, a statement of Gross Receipts. All itemized statements of Gross Receipts shall include an analysis of Gross Receipts categorized by date, event, space, City’s event identification number, and services provided during such respective month.

#### **1.24. Accounts Receivable.**

Concessionaire’s failure to collect payment on the account of patrons to whom Concessionaire has extended credit purchase privileges shall not be allowed as a cause to reduce the Gross Receipts on which Commission Fee payments are based.

#### **1.25. Unpaid Fees**

All unpaid payments due City hereunder shall bear a service charge of two percent (2%) per month if same are not paid and received by City on or before the day of the month in which payments are due, and Concessionaire agrees that it shall pay and discharge all costs and expenditure, including reasonable attorney’s fees incurred or expended by City in collection of

said delinquent amounts due, including service charges. All payments due Concessionaire from CEF hereunder which remain unpaid for thirty (30) days after the invoice date, may at Concessionaire's sole discretion, be set-off against the Commission Fee and retained by Concessionaire.

#### **1.26. Notice, Place and Manner of Payments**

Payments shall be made by check at the office of the Director, or at such other place in the City of Kansas City, Missouri, as City may hereafter designate, in writing, and shall be made in legal tender of the United States. Checks are to be payable to the City of Kansas City, Missouri.

#### **1.27. Other Fees and Charges**

If Concessionaire fails, neglects or refuses to perform or fulfill any of the conditions of this Agreement, within five (5) days of receipt of written notice from City, City may be required or elect to pay any sum or sums or incur any obligations or expense because of Concessionaire's failure, neglect or refusal. In such event, Concessionaire will reimburse City for such payments made that shall include all interest, costs, damages and penalties in conjunction with such sums so paid or expenses so incurred and may be added to any installment of the fees and charges.

#### **1.28. Cash Losses**

Concessionaire is solely responsible for cash receipt losses to the extent such losses or discrepancies exceed one-half of one percent (1/2 of 1%) of cash register receipts. Cash losses of one-half of one percent (1/2 of 1%) or less will be deducted from the computation of Gross Receipts for each payment period, if such losses are actually sustained.

#### **1.29. Business Records and Reports**

Concessionaire shall maintain an accurate accounting of all receipts and disbursements connected with the operation of the Concession Rights granted hereunder. All accounting shall be separate from the accounting used for Concessionaire's personal financial affairs, or any business or business location operated by Concessionaire. The method of accounting shall be subject to the approval of the Director and shall include the following:

##### **A. Accounts.**

1. Concessionaire shall maintain a separate commercial account at a qualified local depository in Kansas City, Missouri, approved by the City, diverse from any other accounts. This account shall be exclusively used for all receipts involved in any resulting agreement.
2. Concessionaire shall provide and keep in force, at all times, a written authorization to the depository(ies) for City to obtain information and records from the depository(ies) concerning any and all accounts and to inspect the same.

3. At City's request, Concessionaire will make available copies of certified daily deposits with respect to Gross Receipts.

- B. **Records.** Concessionaire shall maintain real, proprietary and nominal account segregating and identifying Gross Receipts in accordance with generally accepted accounting principles.

## **Section 2. RESPONSIBILITIES OF CITY.**

### **2.1. Concession Premises**

City shall provide a permanent location for kitchen, administrative offices, storage space and concession stands.

### **2.2. Occupancy of Premises**

City shall have the right to enter the assigned food service and storage areas at all reasonable times Concessionaire's employees are present for the purpose of examining the state of repair and condition of premises and Equipment, and for the purpose of determining whether the terms, covenants and conditions contained within this agreement are being fully and faithfully observed and performed. City shall have the right to reject the character of service and require that undesirable practices be discontinued or remedied. Failure of Concessionaire to take appropriate action after notification from City shall be considered a breach of contract.

### **2.3. Hours of Operation /Liquor Sales**

City shall have the right to approve or change food service hours of operation to adequately meet the demands of events taking place within the Premises.

### **2.4. Setup Notification**

City shall provide Concessionaire, in a timely fashion, all information necessary to set-up and service events within the facilities including those events requesting alcoholic beverages not be sold for all or for specified periods within the term of their facility rental agreement.

### **2.5. Event Notification**

The City Sales Department shall notify Concessionaire, by email or fax, of definite bookings on a timely basis. Concessionaire may request from City's Contract Compliance Officer a report of all bookings on the Premises.

### **2.6. Temporary or Portable Food Locations**

- A. City reserves the right to approve or disapprove placement of food service sales areas, as well as dates, times and number, whether temporary or permanent.

- B. City reserves the right to require Concessionaire to move or dismantle temporary stands and Equipment to facilitate the needs of other events.

## **2.7. Receiving Dock**

City shall provide, at its expense, dumpsters, a compactor and trash removal service at the Premises' receiving Dock A for the benefit of Concessionaire. Concessionaire is responsible for keeping the receiving Dock A clean and clear of trash.

## **2.8. Use and Maintenance of Property and Equipment**

City shall provide carted, pallated or stacked tables and chairs for all catered events. Concessionaire's personnel shall set up and tear down and restack all tables and chairs and City will return the Equipment to storage area. Concessionaire is responsible for maintaining and cleaning the space inside the perimeter of the room or dining area if in exhibit hall throughout the duration of the event. City is responsible for perimeter cleaning and maintaining of restrooms. City shall, at Concessionaire's request, perform minimal overnight cleaning in such catering space.

## **2.9. Equipment/Premise Maintenance**

- A. City retains the right to approve/disapprove all enhancements or fixtures to premises provided by Concessionaire.
- B. City shall maintain the structural and mechanical systems as outlined in this agreement. City shall timely make and pay for all repairs, maintenance and replacements to the mechanical and utility systems (including HVAC and exhaust systems), structural components (including floors, walls, roofs and ceilings), excepting only (i) those items expressly stated herein to be the responsibility of Concessionaire and (ii) repairs necessitated by Concessionaire's negligence.
- C. City shall have the right to request proof of a pest control treatment plan, approval of appropriate schedule of pest control treatment and shall retain the right to require modifications as necessary. All attempts should be made to coordinate pest control schedule with those of City in other parts of the Premises.

## **2.10. Right to Enter, Inspect and Make Repairs**

City and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right (at such times as may be reasonable under the circumstances and with as little interruption of Concessionaire's operations as is reasonably practicable) to enter upon and in the Concession Premises for the following purposes:

- A. **Inspection.** To inspect such premises to determine whether Concessionaire has complied and is complying with the terms and conditions of this Agreement.
- B. **Maintenance.** To perform maintenance and make repairs in any case where City is

obligated to do so or Concessionaire is obligated but has failed to do so, after City has given Concessionaire reasonable notice to do so, in which event Concessionaire shall reimburse City for the reasonable cost thereof promptly upon demand.

- C. **Access.** To gain access to the mechanical, electrical utility and structural systems of the Premises for the purpose of inspecting, maintaining and repairing such systems.

## **2.11. Waiver of Commissions**

City agrees to not waive any catering percentages or commissions to clients of the CEF or any approved caterer, prior to notification to Concessionaire.

## **2.12. Utilities and Environmental**

- A. City shall provide and pay for the necessary and reasonable quantities of the following utilities used by Concessionaire in course of normal operations. Concessionaire shall use all reasonable care to avoid waste of the following utilities and energy:

1. Domestic cold water;
2. Domestic hot water at 160 degrees Fahrenheit;
3. Gas (low pressure);
4. Electrical energy.

- B. City shall pay for all sewer charges from Concessionaire's operations, unless Concessionaire's negligence shall have been the cause necessitating such maintenance, repair or replacement.

- C. City shall retain the right to monitor Concessionaire for use of materials or processes, which violate or may violate Federal, State and Local Pollution Control Ordinances.

- D. City shall operate the heating, ventilation, air conditioning and exhaust systems of the facilities during periods of occupancy as are necessary to maintain satisfactory conditions.

- E. Telephone System/Service:

1. City shall provide Concessionaire with an extension of CEF installed telephone service for the purpose in-house communication.
2. The cost of regular telephone service and/or system shall be the responsibility of Concessionaire.

- F. Service Interruptions

1. City shall not be responsible for service interruption(s) if the cause of the interruption is beyond reasonable control of City, or if the interruption(s) result

from Equipment failures, power outages or maintenance requirements.

2. City shall not be responsible for any associated damage(s) resulting from said service interruptions.
3. City shall retain the right to interrupt utility services as may be required to make new connections, disconnect existing connections, or for regular inspection and/or maintenance requirements.
4. Whenever possible, interruption of utility services for said requirements shall be scheduled in advance with the cooperation of Concessionaire.
5. City shall not be liable or responsible for any consequential economic or property loss or damage caused, or brought about by any such interruption.

### **Section 3. TERM OF AGREEMENT.**

The term of the contract shall begin on September -----, 2020, as executed by the City and shall continue in effect for a period of six (6) years. At any time prior to the expiration of the initial term or any subsequent term, the City, in its sole discretion, may renew this contract for up to two (2) additional two (2) year terms.

### **Section 4. COMPENSATION AND REIMBURSEMENT.**

As consideration for management of the food service, Concessionaire agrees to pay City each year, during the term hereof, a Concession Fee, pursuant to Section 1.21.

### **Section 5. NOTICES.**

All notices required by this Agreement shall be in writing sent by certified U.S. mail, postage prepaid, or commercial overnight courier, to the following:

**City:**

Kansas City Convention and Entertainment Facilities Department  
Oscar C. McGaskey, Jr., Executive Director  
301 W 13th Street, Suite 100  
Kansas City, MO 64105  
Attn: Accounting, Mark Cunningham

**Concessionaire:**

ARAMARK Sports and Entertainment Services, LLC  
1101 Market Street  
Philadelphia, PA 19107  
Attn: President

With a required copy to:



ARAMARK Sports and Entertainment Services, LLC  
1101 Market Street  
Philadelphia, PA 19107  
Attn: Vice President and Associate General Counsel

All notices mailed by certified U.S. mail are effective three (3) days after mailing.

## **Section 6. NO GRATUITIES AND KICKBACKS.**

The provisions of City's Code Section 3-303, prohibiting gratuities to City employees, and kickbacks by subcontractors, and Code Sections 3-307 and 3-309 imposing sanctions and penalties for violations, shall apply to this Agreement.

### **6.1. Gratuities.**

Concessionaire certifies that it has not and will not offer or give any City employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.

### **6.2. Kickbacks.**

Concessionaire certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Concessionaire or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

## **Section 7. CONFLICTS OF INTEREST.**

The provisions of City's Code Section 3-301 prohibiting City officers and employees from having a financial or personal interest in any contract with City, and Code Sections 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement. Concessionaire certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this Agreement, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Concessionaire in this Agreement.

## **Section 8. PROHIBITION AGAINST CONTINGENT FEES.**

The provisions of City's Code Section 3-305, prohibiting the retention of persons to solicit contracts for contingent fees, and Code Sections 3-307 and 3-309, imposing sanctions and penalties for violations, shall apply to this Agreement. Concessionaire certifies that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an Agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide

employees or bona fide established commercial or selling agencies maintained by Concessionaire for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this Agreement without liability or, at its discretion, to deduct from Concessionaire price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

#### **Section 9. ASSIGNABILITY OR SUBCONTRACTING.**

- A. City desires that Minority Business Enterprises (“MBE”) and Women’s Business Enterprises (“WBE”) have a maximum opportunity to participate in the performance of City contracts. City desires that all contractors overall service goal for services supplied from outside contractors to comply with MBE/WBE goals. This Agreement shall be subject to goals of 10% MBE participation and 14% WBE participation.
- B. Concessionaire shall not sell, subcontract, assign or transfer any part or all of Concessionaire’s obligations or interests without City’s prior approval. If Concessionaire shall sell, subcontract, assign, or transfer any part of Concessionaire’s interests or obligations under this Agreement without the prior approval of City, it shall constitute a material breach of this Agreement. Notwithstanding the foregoing, Concessionaire shall be permitted to assign this Agreement to Concessionaire’s affiliates or related parties without the prior approval of the City.

#### **Section 10. INDEPENDENT CONTRACTOR.**

Concessionaire shall be considered independent with respect to all services performed under this Agreement. Concessionaire accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers’ compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or liability for such contributions or taxes. Nothing contained in this Agreement or any act of City, or Concessionaire, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with City. Concessionaire is not City’s agent and Concessionaire has no authority to take any action or execute any documents on behalf of City.

#### **Section 11. GENERAL INDEMNIFICATION.**

Concessionaire shall defend, indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including reasonable attorneys’ fees, arising out of or resulting from any acts or omissions in connection with this Agreement, caused in whole or in part by Concessionaire, its employees, agents, or subcontractors, except to the extent claims, damages, liability, losses, costs, and expenses arise out of or result from any negligent or other wrongful acts or omissions caused in whole or in part by City, its officials, employees or agencies. In the event of a good faith dispute between the parties concerning their respective comparative fault for a third party claim subject to the provisions of this paragraph, Concessionaire, upon written notice from City, shall undertake the defense of such claim notwithstanding such dispute; provided, however, that in doing so, Concessionaire shall not relinquish, but shall retain and reserve, its right to seek contribution or other relief from City in respect of the City’s comparative fault in connection with such matter.

## **Section 12. INSURANCE.**

**12.1.** Concessionaire shall procure and maintain in effect throughout the duration of this Agreement insurance coverage not less than the types and amounts specified in this section. In the event that additional insurance, not specified herein, is required during the term of this Agreement, Concessionaire shall supply such insurance. During the term of the Agreement, the following insurance coverage shall be kept in full force and effect continually and may be increased to meet the current needs of the Location. Workers' Compensation: As required by the Missouri state law.

- A. Employer's Liability Coverage: \$500,000.
- B. Liquor Liability: \$1,000,000.
- C. Comprehensive General Liability Coverage including Bodily Injury, Personal Injury Liability, Property Damage, Contractual Liability, and Products Coverage: \$1,000,000 per occurrence.
- D. Comprehensive Automobile Liability Insurance: \$1,000,000. Combined Single Limit.
- E. Umbrella or excess Liability: Additional \$5,000,000. Coverage is to apply excess of Comprehensive General, Employer's, Liquor, and Automobile Liability policies.
- F. Personal Property Insurance: All Risk Coverage on a replacement cost basis for appropriate limit of insurance equal to replacement cost.
- G. Blanket Employee Dishonesty: \$100,000 limit.

### **12.2. Qualifications of Coverage's**

- A. The insurance company must be licensed or approved by the State of Missouri to do business in Missouri.
- B. The insurance company must have an A.M. Best Rating of B+: V or higher.
- C. All coverage should be evidenced by a current Certificate of Insurance, meeting or exceeding the amounts in Section 12.1 above, in a form reasonably approved by the Director of Finance.
- D. All coverage must contain a ten (10) day written notice of cancellation or reduction to the Additional Insured.
- E. All policies, with the exception of the Worker Compensation, Comprehensive Automobile and Blanket Employee Dishonesty, shall include City as an additional insured.
- F. Prior to signing of this Agreement, coverage is to be provided, and Concessionaire shall furnish to City a certificate evidencing the required coverage prior to the execution of this Agreement.

- G. Regardless of any approval by City, it is the responsibility of Concessionaire to maintain the required insurance coverage in force at all times, its failure to do so will not relieve it of any contractual obligation or responsibility. In the event of Concessionaire's failure to maintain the required insurance in effect, City may order Concessionaire to immediately cease operations, and upon ten (10) days' notice and an opportunity to cure, may pursue its remedies for breach of this Agreement as provided for herein.

### **Section 13. GOVERNING LAW.**

This Agreement shall be construed and governed in accordance with the law of the State of Missouri. Any action relating to the Agreement or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within Jackson County, Missouri, and in no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

### **Section 14. COMPLIANCE WITH LAWS.**

Concessionaire, CEF and the City shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this Agreement. Concessionaire, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Agreement.

### **Section 15. TAX COMPLIANCE.**

**15.1.** As a condition precedent to the approval of this Agreement, Concessionaire shall furnish to City sufficient proof from City's Commissioner of Revenue, dated not more than sixty (60) days before the date furnished to City, verifying that Concessionaire is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees.

**15.2.** As a condition precedent to a subcontractor, approved by City, performing any work under this Agreement, Concessionaire shall furnish to City sufficient proof from City's Commissioner of Revenue, dated not more than sixty (60) days before the date Concessionaire's subcontractor begins work, verifying that Concessionaire's subcontractor is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees.

**15.3.** As a condition precedent to final payment under this Agreement, Concessionaire shall furnish to City sufficient proof from City's Commissioner of Revenue, dated not more than sixty (60) days before the filing of an application for final payment verifying that Concessionaire is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees. With respect to Concessionaire's subcontractors, Concessionaire shall furnish to City sufficient proof from City's Commissioner of Revenue, dated not more than sixty-days (60 days) before the date of Concessionaire's final payment to the subcontractor, that the subcontractor is not delinquent for any City earnings or occupational license taxes, including withholdings from its respective employees.

**15.4.** If, at the time of final payment to Concessionaire, they are unable to furnish City sufficient proof from the Commissioner of Revenue that all its subcontractors, if any, are not delinquent for any City earnings or occupational license taxes, including withholdings from its respective

employees; then the Director may approve final payment to Concessionaire if the Director determines that Concessionaire has made a good faith effort to furnish such evidence or there are other extenuating circumstances which make it impossible for Concessionaire to furnish such evidence.

**15.5.** Concessionaire's obligation to comply with all City tax and licensing requirements under this Agreement shall survive the term of this Agreement.

## **Section 16. TERMINATION OF AGREEMENT.**

City may, acting by and through the Director, following the notice and cure rights provided in Section 17.1(A), may declare this Agreement terminated in its entirety in the manner provided in Section 17 (1-4) hereof, and it may exercise all rights of entry and re-entry, with or without process of law, upon Concessionaire's Premises, for one or more of the following events:

### **16.1. Non-Payment**

If the fees, rentals, charges or other money payments which lessee herein agrees to pay, or any part thereof, shall be unpaid thirty (30) days after the date the same shall become due.

### **16.2. Default**

If Concessionaire shall have failed in the performance of any covenant or condition herein required, failure by City to take any authorized action upon such default by Lessee shall not be construed to be an or act as a waiver of said default or any subsequent default by Lessee. The acceptance of payments by City from Lessee for any period or periods after a default by Lessee shall not be deemed a waiver of any right on the part of City to terminate this Agreement for failure of Lessee to perform, keep or observe any of the terms, covenants or conditions hereof.

### **16.3. Suspension or Revocation of Act, Power, License, Permit or Authority**

If any act, power, license, permit or authority has been suspended or revoked for any period in excess of thirty (30) days, thereby preventing Concessionaire from fully complying with all of the rights and obligations of this Agreement.

### **16.4. Transfer of Title, Right or Interest**

If by operation of law or otherwise, the right, title interest of Concessionaire under this Agreement, is transferred to, passes to or devolves upon any other, person, firm or corporation, without the written consent of City, or in some manner other than as the result of merger or consolidation.

### **16.5. Levy or Attachment or Execution Upon**

The levy of any attachment or execution, or of any process of a court of competent jurisdiction which, as a direct consequence of such process, interferes or will interfere with Lessee's occupancy of the Leased Premises and its operations under this Agreement, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed or set

aside within a period of thirty (30) days.

#### **16.6. Voluntary Abandonment, Desertion, Vacation or Discontinuance**

If Concessionaire without the prior consent of City, voluntarily abandons, deserts, vacates or discontinues all or part of its operation of the Concession Rights, or the Concession Premises or any other action that results in a failure by Concessionaire to provide the public and others with the service contemplated hereunder.

#### **16.7. Termination for Convenience**

After fulfillment of the first three consecutive years of this Agreement, the City may terminate this Agreement if reason is shown to be in the best interests of the City, and such reason shall be provided in writing to Concessionaire at least ninety (90) calendar days prior to the date of termination, which shall not be unreasonably withheld.

#### **16.8. Refund of Capital Investment**

If this Agreement is prematurely terminated as a result of the fault of Concessionaire, the unamortized portion of the Capital Investment, Section 1.7(c), will not be retained by or refunded to Concessionaire by City and will become an asset of the City. In the event that Concessionaire has not expended the full Capital Investment, the balance of the unexpended amount shall be paid to the City thirty (30) calendar days prior to the date of said premature termination.

### **Section 17. DEFAULTS AND REMEDIES.**

**17.1.** Concessionaire shall be in default of this Agreement upon the happening of any of the following events:

- A. If Concessionaire fails to comply with any of the provisions required of Concessionaire under this Agreement, and such failure continues for a period of twenty (20) days after written notice is given to Concessionaire by City; or
- B. If, by operation of law or otherwise, the right, title, or interest of Concessionaire in this Agreement is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or
- C. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Concessionaire's performance under this Agreement, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
- D. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Concessionaire from performing under this Agreement.

**17.2.** Upon the occurrence of any one or more of the events as set forth in subparagraphs A through D of this Section, or upon any other default or breach of this Agreement, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and

remedies without waiving such default:

- A. Interplead funds to a court or pay any sum required to be paid by Concessionaire to parties other than City, and which Concessionaire has incurred in connection with this Agreement and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith will be repaid by Concessionaire to City on demand; or
- B. Enjoin any breach or threatened breach by Concessionaire of any covenants, Agreements, terms, provisions or conditions hereof; or
- C. Bring suit for the performance of any covenant devolving upon Concessionaire for performance or damage thereof, all without terminating this Agreement; or
- D. Terminate this Agreement upon thirty (30) days written notice to Concessionaire, specifying date of termination and cause thereof.

**17.3.** Notwithstanding any other provision contained herein, in no event under this Agreement shall either party hereto be liable for, and each party hereto, on behalf of itself and its controlled affiliates, hereby waives any claim for, any indirect, special, consequential or punitive damages, including, without limitation, loss of profits or business opportunity, arising under or in connection with this Agreement.

**17.4.** In the enforcement of its rights and remedies under this Agreement, each of the parties hereto shall not seek, enter or enforce any personal judgment against any stockholder, member, general or limited partner, director, officer, employee or principal, disclosed or undisclosed, of the other party or any of the other party's affiliates (or any of their respective successors and assigns) and shall look only to the assets of the other party and its successors and assigns.

## **Section 18. WAIVER.**

Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition. No term, covenant, or condition of this Agreement can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Concessionaire to which the same may apply and, until complete performance by Concessionaire of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this Agreement or by law despite any such forbearance or indulgence.

## **Section 19. RIGHTS AND REMEDIES CUMULATIVE AND NOT EXCLUSIVE.**

All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this Agreement shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

## **Section 20. AMERICANS WITH DISABILITIES ACT.**

Concessionaire agrees to comply, during the course of this Agreement, with all provisions of the Americans with Disabilities Act, as applicable and as amended from time to time.

**Section. 21. MINORITY AND WOMEN'S BUSINESS ENTERPRISE.**

City is committed to ensuring that minority and women's business enterprises (M/WBE) participate to the maximum extent possible in the performance of City contracts. Concessionaire agrees to comply with all requirements of City's Minority and Women's Business Enterprise Program as enacted in City's Code of Ordinance sections 3-421 through 3-469 and as hereinafter amended. Concessionaire shall make its good faith efforts in carrying out this policy by implementing its contractor utilization plan. The specific goals set by the City for this project are 10% MBE and 14% WBE participation.

If Concessionaire fails to achieve the M/WBE goals stated in its contractor utilization plan, as amended, the City will sustain damages, the exact extent of which would be difficult or impossible to ascertain or estimate at the time of execution of this contract. Therefore, in order to liquidate those damages, the monetary difference between the amount of the M/WBE goals set forth in this Concessionaire's utilization plan, as amended, and the amount actually paid to qualified MBEs and WBEs for performing a commercially useful function will be deducted from the Concessionaire's payments as liquidated damages. In determining the amount actually paid to qualified MBEs and WBEs, no credit will be given for the portion of participation that was not approved by the Director of City's Human Relations Division, unless the Director determines that the Concessionaire acted in good faith. No deduction for liquidated damages will be made when, for reasons beyond the control of the Contractor, the M/WBE participation stated in the Concessionaire's Utilization Plan, as amended and approved by the Director, is not met.

Concessionaire shall comply with City's MBE/WBE Program Reporting System requirements. Concessionaire shall use City's Internet web-based MBE/WBE Program Reporting System provided by City and protocols included in that software during the term of this Contract. Concessionaire shall maintain user applications to City's provided system for all applicable personnel and shall require subcontractors to maintain applications.

**Section 22. AFFIRMATIVE ACTION.**

If this Contract exceeds \$300,000.00 and Concessionaire employs fifty (50) or more people, Concessionaire shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Concessionaire warrants that it has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the Contract. Concessionaire shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 3 of City's Code. Concessionaire shall:



1. Submit, in print or electronic format, a copy of Concessionaire's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Concessionaire does not possess a current certification of compliance, Concessionaire shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.
2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Concessionaire shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.

City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Concessionaire fails, refuses or neglects to comply with the provisions of Chapter 3 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Concessionaire may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

## **Section 23. AUDIT.**

23.1 The books, documents and records of Concessionaire in connection with this Agreement shall be made available to City Auditor, City's Internal Auditor, City's Director of Human Relations and City department administering this Agreement within ten (10) days after the written request is made. City Auditor, City's Internal Auditor City's Director of Human Relations and City department administering this Agreement shall have the right to audit this Agreement and all books, documents and records relating thereto.

23.2 Concessionaire shall maintain all its books, documents and records relating to this Agreement during the contract period and for three (3) years after the date of final payment.

23.3 Documentation supporting all entries in financial records such that if all records are maintained on the Premises, all supporting information for accounting entries is also maintained on the Premises. If home office and branch accounting is not practiced by Concessionaire, but instead all accounting is performed at a remote, centralized location then supporting documentation for all revenue receipts shall be maintained at the Concession Premises, together with bank deposit receipts, bank statements, payroll worksheets, and all expenditures and all information transmitted to the remote accounting facility.

23.4 Concessionaire shall be responsible for the purchase and use of any food and beverage accounting software, subject to the prior approval of City, which approval shall not be unreasonably withheld.

23.5 Within ninety (90) days after the close of each calendar year hereunder, or portion thereof, Concessionaire shall furnish to City a sworn statement certified by an independent Certified Public Accountant, as to accuracy of all required records. If Concessionaire has overpaid City in any calendar year, then the amount of the overpayment will be credited to Concessionaire. If Concessionaire has underpaid City, Concessionaire shall pay the amount of the underpayment within thirty days. If the report of Gross Receipts disclosed by such audit or observation exceeds the amount reported by Concessionaire by more than two percent (2%), Concessionaire shall, within thirty days after billing, pay any additional fees disclosed by such audit. If no reasonable explanation for the discrepancy can be given, City shall have the right to declare Concessionaire in default.

23.6 Late Charges. If either party fails to pay the other any amount due, the party failing to make payment shall be charged a late charge of two percent (2.0%) per month if same is not paid and received by on or before the twentieth (20th) day of the month following the month in which said payments are due. The parties agree to pay reasonable costs and expenses incurred by the party in collection of delinquent amounts, including late charges.

#### **Section 24. HEADINGS; CONSTRUCTION OF AGREEMENT.**

The headings of each section of this Agreement are for reference only. Unless the context of this Agreement clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender. In the event of any conflict between this Agreement and any incorporated Attachments, the provisions of this Agreement shall control.

#### **Section 25. MERGER.**

This Agreement, including the request for proposal and any referenced Attachments and Exhibits, constitutes the entire Agreement between City and Concessionaire with respect to this subject matter, and supersedes all prior Agreements between City and Concessionaire with respect to this subject matter, and any such prior Agreement shall be void and of no further force or effect as of the date of this Agreement.

#### **Section 26. MODIFICATION.**

- A. Unless stated otherwise in this Agreement no provision of final Agreement may be waived, modified or amended except by written amendment signed by City and Concessionaire.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this Agreement, shall affect or modify any term or terminology of this Agreement and any such act, conversation or communication shall not be binding upon City or Concessionaire.

## **Section 27. SEVERABILITY OF PROVISIONS.**

Except as specifically provided in this Agreement, all of the provisions of this Agreement shall be severable. In the event that any provision of this Agreement is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this Agreement shall be valid unless the court finds that the valid provisions of this Agreement are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this Agreement could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

## **Section 28. BONDS AND SURETY.**

**28.1.** Upon execution of this Agreement, Concessionaire shall furnish a performance bond to City on City furnished forms executed by a Surety, in the amount of \$500,000 Five Hundred Thousand Dollars, guaranteeing Concessionaire's faithful performance of each and every term of this Agreement and all authorized changes thereto. In the event structural Improvements become a part of this Agreement City has the right to require a construction performance bond for amount to be determined, and Concessionaire's surety must have the following attributes:

**28.2.** Be approved by City's Finance Department; and

**28.3.** Be qualified to issue bonds at amounts specified in the Department of the Treasury Circular 570; and

**28.4.** Be licensed by the State of Missouri to do business in the State of Missouri; and

**28.5.** Retain an A.M. Best rating of "B+, Class V" for Bonds in excess of \$200,000.

## **Section 29. BUY A MERICAN AND MISSOURI PREFERENCE.**

It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract thereto shall be manufactured or produced in the United States whenever possible. Pursuant to Section 71.140 RSMo., preference shall be given to materials, products, supplies and all other articles produced, manufactured, made or grown within the State of Missouri.

## **Section 30. BINDING EFFECT.**

This Agreement shall be binding upon City and Concessionaire and their successors in interest.

## **Section 31. REPRESENTATIONS AND WARRANTIES.**

City and Concessionaire each certify that it has the power and authority to execute and deliver this Agreement, to use the funds as contemplated hereby and to perform this Agreement in accordance with its terms.

## **Section 32. NOISE CODE.**

Concessionaire shall comply with the provisions of Code Chapter 46, the Noise Control Code and or Directors request to reduce noise generating activities.

**Section 33. OBTAINING PROFESSIONAL SERVICES.**

Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals hereunder, shall apply to this Agreement. Concessionaire certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of the contract serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this Agreement.

**Section 34. COUNCIL APPROVAL.**

This Agreement is contingent upon and shall not become binding or effective until the effective date of a City Council Ordinance authorizing execution of this Agreement.

**Section 35. EXHIBITS.**

The following exhibits are attached to this Agreement and are made a part hereof:

Exhibit A –Commission Fee Agreement

Exhibit B –Concession Premises

Exhibit c-MBE/WBE

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement the day and year first above written.

**CONCESSIONAIRE**

ARAMARK Sports and Entertainment Services, LLC  
1101 Market Street  
Philadelphia, PA 19107

I hereby certify that I have authority to execute  
this document on behalf of Concessionaire

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

(Attach corporate seal if applicable)

**KANSAS CITY, MISSOURI**

Convention and Entertainment Facilities Department

Oscar C. McGaskey, Jr. Executive Director

301 W 13th Street, Suite 100

Kansas City, MO 64105

Phone: (816) 513-5000

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

---

Assistant City Attorney

(Date)

## EXHIBIT A

### CONCESSIONAIRE COMMISSION FEE AGREEMENT

Gross Receipt Category	Percentage of Gross Receipts to City
Food and Non-Alcoholic Beverages	29% for Gross Receipts up to \$1,000,000  31% for Gross Receipts from \$1,000,001-2,000,000 (on the increment)  33% for Gross Receipts from \$2,000,001-and above (on the increment)
Annual Concession Alcoholic Beverage Gross Receipts	27%
Novelties and any other services or equipment rental fees	10%
Proposed joint marketing fund rate	Aramark shall accrue 1.5% of Adjusted Gross Receipts Across the premises, inclusive of concession revenues as well as awarded catering revenues.



## **EXHIBIT B**

### **CONCESSION PREMISES**

#### Description of Concessionaire Premises

The facilities under this contract (hereafter “Premises”) are comprised of Bartle Exhibit Halls A-E, Meeting Rooms 2100-2200, Municipal Arena, Music Hall, Little Theatre and Municipal Exhibition Hall “LEX”.

Space dedicated exclusively to the selected proposer consists for food service, a full service kitchen and warehouse, of approximately 19,000 square feet, office space of approximately 2,000 square feet, Concession Stands as outlined in this document.

This contract will exclude the Grand Ballroom (2501) and the Conference Center (1500, 2500, 3500). The Loews Kansas City Hotel has been granted the right to provide exclusive catering, public concessions and alcohol sales and service in the Grand Ballroom and Conference Center. The Lowes Convention Hotel will have exclusive use of the onsite Grand Ballroom kitchen and pantry facilities located in the Grand Ballroom and Conference Center.



## **EXHIBIT C**

### **CONCESSION PREMISES – KANSAS CITY CONVENTION AND ENTERTAINMENT FACILITIES**

#### **MUNICIPAL AUDITORIUM**

1. Concession Stand #110 (185 level), North, Entrance Municipal Auditorium

Electric: 3 phase, 220 amp panel, 120/208 volts Water: Hot and Cold

Natural Gas

Size: 10'2" X 83'. There are two different window dimensions on this level.

- 3 concession windows: 10'11" X 7'9". The window opening is 4'8" from the counter up.
- 2 concession windows: 9'5" X 7'1". The window opening is 4' from the counter up.

2. Concession Stand #206 (199 level), Northwest, Municipal Auditorium Electric: 3 phase, 220 amp panel, 120/208 volts

Water: Hot and Cold

Size: 9' X 29". The window is 11'4" X 7'5". The window opening is 3'0" from the counter up.

3. Concession Stand #210 (199 level) West Side, Municipal Auditorium Electric: 3 phase, 220 amp panel, 120/208 volts

Water: Hot and Cold

Size: 7'5" X 12'3". The window is 12'3" X 7'4". The window opening is 4'0" from the counter up.

4. Concession Stand #232 (199 level) East Side, Municipal Auditorium Electric: 3 phase, 220 amp panel, 120/208 volts

Water: Hot and Cold

Size: 9'0" X 28'6". The window is 11'1" X 6'3". The window opening is 3'0" from the counter up.

5. Concession Stand #228

Size: 7'7" X 12'3". The window is 12'2" X 7'5". The window opening is 4'2" from the counter up.

6. Concession Stand #224

Size: 7'7" X 12'3". The window is 12'3" X 7'4". The window opening is 4'0" from the counter up.

7. Concession Stand #214

Size: 10'1" X 16'0". The window is 12'1" X 7'4". The window opening is 4'1" from the counter up.

**Level 3** has four concession areas that each measure 23'9" X 8'6". The window is 7'11" X

7'7". The window opening is 4'3" from the counter up.

## **BARTLE EXHIBIT HALL**

1. Concession Stand (Level 3), H. Roe Bartle Hall – Hall B #370 Electric: 3 phase, 200 amp, 120/208 volts  
Water: Hot and Cold Size: 14' X 46'6"
2. Concession Stand (Level 3), H. Roe Bartle Hall – Hall C #301 Electric: 3 phase, 100 amp, 120/208 volts  
Water: Hot and Cold  
Size: 11'6" X 36'6"
3. Concession Stand (Level 3), East Side – H. Roe Bartle Hall, Hall D #371 Electric: 3 phase, 2-100 amp, 120/208 volts  
Water: Hot and Cold Size: 10' X 62'
4. Concession Stand (Level 3), West Side – H. Roe Bartle Hall, Hall E #302 Electric: 3 phase, 2-100 amp, 120/208 volts  
Water: Hot and Cold  
Size: 14' X 48'
5. Concession Stand (Level 3), South Side – H. Roe Bartle Hall, Hall E #389 Electric: 3 phase, 100 amp, 120/208 volts  
3 phase, 400 amp, 120/208 volts Water: Hot and Cold  
Size: 16' X 60'





