



CATERING AND CONCESSIONS
PROFESSIONAL SERVICES AGREEMENT

This CATERING AND CONCESSIONS PROFESSIONAL SERVICES AGREEMENT (this "Agreement") is made and entered into this ____ day of _____ 2021 by and between the City of Port St. Lucie, a Florida municipal corporation (the "City"), and _____, (the "Contractor"). The City and the Contractor may be referred to individually as a "party" or collectively as "the parties."

WHEREAS, the City owns and operates the public event facility known as the MID FLORIDA EVENT CENTER located at 9221 SE Civic Center Place, Port St. Lucie, FL (the "Center"); and

WHEREAS, the Contractor is engaged in the business of providing concessions, food and beverages and other services; and

WHEREAS, the City desires to grant to the Contractor the non-exclusive right to provide concessions, catering, food, alcohol and beverages and other services at the Center in accordance with the terms hereof;

NOW, THEREFORE, in consideration of the mutual covenants of the parties, the receipt and sufficiency of which is hereby acknowledged by both parties, it is agreed as follows:

I. RECITALS. The foregoing recitals are hereby incorporated as forming the intent and purpose of this Agreement.

II. DEFINITIONS. All capitalized words in this Agreement other than proper nouns, section headings or words required to be capitalized for proper usage, are defined terms. As used in this Agreement, the following terms and words are hereby defined as follows:

- (a) "Budget" means an annual, itemized and detailed operating budget reflecting projected Direct Operating Expenses, Gross Receipts and Net Revenues from the sales and operation of Catering and Concession Sales.
- (b) "Catering and Concession Sales" means all sales of food and beverage, including all alcoholic beverages from portable stands, permanent stands, and roving hawkers, and all catering sales.

- (c) “Commission Fees” means the compensation to be paid to the City by the Contractor.
- (d) “Director” means that employee designated by the City as the Director of the Center.
- (e) “Direct Operating Expenses” means the following costs incurred by the Contractor which are directly related to Catering and Concessions sales and operations:
 - (1) the cost of products sold at the Center;
 - (2) the cost of paper and plastic products, small wares, condiment and similar items relating to or associated with the sale and operation of food & beverage products and services;
 - (3) total payroll costs, including reasonable fringe benefits, of Contractor’s employees directly engaged in the performance of the Contractor’s responsibilities hereunder;
 - (4) other direct costs incurred exclusively in the performance of the Contractor’s obligations hereunder, including, but not limited to, costs of supplies, uniforms, insurance, maintenance and repairs, audits, license fees and taxes. Under the Agreement, Direct Operating Expenses will also include the cost of location manager, field staff or supervisory personnel. All financial procedures, including the calculation of Direct Operating Expenses shall be in accordance with the “Generally Accepted Accounting Principles” (GAAP) as consistently applied and as defined herein.
- (f) “Equipment” means facilities for food preparation, including machinery, equipment, fixtures and improvements in the Catering/Concession Areas at the Center.
- (g) “Final Accounting” means the annual financial accounting to be made following the conclusion of each Fiscal Year.
- (h) “Fiscal Year” means the twelve (12) month period of time from October 1 of a given year through September 30 of the following year, and includes a first partial Fiscal Year, if applicable.
- (i) “GAAP” means those certain generally accepted accounting principles as promulgated and defined by the American Institute of Certified Public Accountants (AICPA).
- (j) “Gross Receipts” means for any particular Fiscal Year all revenues of any kind, cash or non-cash, realized by Contractor from Catering and Concession Sales pursuant

to the terms hereof, less the amount of sales, use, excise or similar taxes imposed on or with respect to Catering and Concession Sales which are collected and paid to applicable taxing authorities by Contractor.

- (k) “Gross Receipts Account” means the account or accounts utilized by Contractor to track Gross Receipts.
- (l) “Net Revenues” means Gross Receipts less the Direct Operating Expenses.
- (m) “Quarter” means each three (3) months of the Fiscal Year.

III. REPRESENTATIONS/COVENANTS.

1. **Good Standing.** Contractor must maintain at all times its corporate status and remain validly existing under the laws of the State of Florida having all requisite power and authority in Florida to carry on its business as now conducted, to own or hold its properties, and to enter into and perform its obligations under this Agreement and under each instrument described herein to which it is or will be a party.
2. **Due Authorization.** This Agreement has been duly authorized by all necessary action on the part of, and has been duly executed and delivered by Contractor and neither the execution and delivery of the Agreement, nor compliance with the terms and provisions of the Agreement: (A) requires the approval and consent of any other party; (B) contravenes any existing law, judgment, governmental rule, regulation or order applicable to or binding on Contractor; or (C) contravenes or results in any breach or default under, or results in the creation of, any lien or encumbrance upon any property of Contractor, under any indenture, mortgage, deed of trust, bank loan or credit agreement, the corporate charter or bylaws of Contractor, or any other agreement or instrument in existence on the date of this Agreement to which Contractor is a party.
3. **Enforceability.** This Agreement constitutes a legal, valid and binding obligations of both parties, enforceable in accordance with the terms of this Agreement.
4. **Financial Capability.** Contractor agrees it is fully capable, financially and otherwise, of performing its obligations hereunder.
5. **No Litigation.** Contractor affirms there are no pending, or to the knowledge of Contractor, threatened actions or proceedings before any court or administrative agency, to which Contractor is a party, questioning the validity of this Agreement or any document or action contemplated hereunder, or which are likely, in any single case or in the aggregate, to materially adversely affect Contractor’s performance as required hereunder.

IV. TERM/TERMINATION.

- A. Initial Term. The term of this Agreement shall begin_____and end at midnight, Eastern Time, on_____.
- B. Termination for Cause. The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligations hereunder and, subject to the Notice of Default provisions below, terminate this Agreement.
1. The Contractor fails to deliver or has delivered nonconforming Services or fails to perform, to the City's satisfaction, any material requirement of the Agreement or is in violation of a material provision of the Agreement, including, but without limitation, failure to timely remit any sums due and owing the City hereunder.
 2. The Contractor fails to make substantial and timely progress toward performance of the Agreement;
 3. In the event the Contractor is required to be certified or licensed as a condition precedent to providing the Services, the revocation or loss of such license or certification may result in immediate termination of the Agreement effective as of the date on which the license or certification is no longer in effect;
 4. The Contractor becomes subject to any bankruptcy or insolvency proceeding under federal or state law to the extent allowed by applicable federal or state law including bankruptcy laws; the Contractor terminates or suspends its business; or the City reasonably believes that the Contractor has become insolvent or unable to pay its obligations as they accrue consistent with applicable federal or state law;
 5. The Contractor has failed to comply with applicable federal, state and local laws, rules, ordinances, regulations and orders when performing within the scope of the Agreement;
 6. The Contractor has engaged in conduct that has or may expose the City to liability, as determined in the City's sole discretion;
 7. The Contractor furnished any statement, representation or certification in connection with the Agreement, which is materially false, deceptive, incorrect or incomplete.
- C. Notice of Default. If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's

written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

1. Immediately terminate the Agreement without additional written notice(s); and/or
 2. Enforce the terms and conditions of the Agreement and seek any legal or reasonable remedies; and/or
 3. Procure substitute services from another source and charge the difference between the Agreement and the substitute Agreement to the defaulting Contractor.
- D. Termination Without Cause. The City, in its sole discretion, may terminate this Agreement at any time without cause, by providing at least sixty (60) days' prior written notice to Contractor. Any such termination shall be accomplished by delivery in writing of a notice to Contractor.
- E. Option to Extend. The City retains the right to extend the term of this Agreement for up three (3) years. To exercise its option to extend, the City shall give at least ninety (90) days written notice of its election to extend to Contractor prior to the end of the term of this Agreement.
- F. Collection Costs. Contractor agrees it shall be responsible for fees or charges incurred by the City in collection of any debt owed to the City by Contractor.

V. **COMMISSION FEES.**

- A. Contractor shall pay Commission Fees to the City in accordance with the schedule set forth below. Commission Fees shall be a percentage of the following sales without regard to actual collections by Contractor.

12% of Catering Sales

10% of Concession Sales

15% of Alcohol Sales

10% of Floral Sales, Decorating Sales, or any other sales (including food and beverages) by outside vendors engaged by Contractor.

12% of food and beverage sales, catering sales and concession sales by Contractor for City of Port St. Lucie government agency functions, that occur off the Center Premises.

- B. Contractor shall collect all Gross Receipts and deposit the same in the bank account of Contractor at a bank in Port St. Lucie, Florida or such local bank approved by the City for transfer of Commission Fees to the City. Contractor shall change the depository of Gross Receipts to another local bank approved by the City at the City's request, for reasons such as change in bank ownership, insolvency of the depository bank or it's being placed in receivership. Contractor will pay with its own funds all Direct Operating Expenses from Contractor's account. Contractor shall provide the City with copies of all bank statements, showing all deposits, withdrawals and other transactions of whatsoever nature, relating to Gross Receipts and Direct Operating Expenses.
- C. Commission Fees. Commission Fees shall be paid to the City within ten (10) business days following the last day of each month for all sales and Gross Receipts, including but not limited to Catering and Concessions sales for the immediately preceding calendar month. The Commission Fees shall be paid to the City and shall then be considered Gross Revenue of the City upon deposit in an account designated by the City.
- D. Financial Statement. Contractor shall furnish to the City, no later than ten (10) business days following the last day of each month, a computerized financial statement showing:
1. copies of bank statements
 2. total gross sales
 3. gross receipts by source of sales
 4. commissions owed to the City
 5. the Direct Operating Expenses and Net Revenues for all sales during the immediately preceding calendar month.
- E. Final Accounting. Not later than forty-five (45) business days after September 30th of each fiscal year during the term hereof, Contractor shall provide the City or its designee an annual report of the results of operations prepared in accordance with GAAP for the previous Fiscal year (the "Final Accounting") setting forth the calculation of Gross Receipts, Direct Operating Expenses, and Net Revenues for all sources of sales during the previous fiscal year. The City may grant Contractor an extension of time for delivery of the report if Contractor is delayed due to occurrences beyond Contractor's control. Contractor will pay to City interest at the rate of one and one-half per cent (1½%) per month on any amounts owed to but not received by the City by the Final Accounting date.
- F. Performance Bond/Letter of Credit. Contractor shall file with the City a performance bond or irrevocable letter of credit in favor of the City in the amount

of Fifteen Thousand Dollars (\$15,000.00). The City may bring an action on the bond or letter of credit at any time on its own behalf or on behalf of any person so aggrieved as beneficiary for Contractor's failure to fulfill financial terms under this Agreement. The performance bond or letter of credit shall remain in force and effect for the term of this Agreement.

VI. DUTIES OF CONTRACTOR

- A. Manage and Provide Catering and Concession Operations. Contractor agrees that it will manage the operation of, provide, staff, supplies, goods for the City at the Center for all concession and catering or any other food and beverage vendor, leasing, or licensing sales and operations at the Center diligently, professionally, and in good faith so as to maximize the Gross Receipts and Net Revenues and to ensure prompt and courteous service to the public on an ongoing and consistent basis.
1. All food and beverage shall be expertly prepared and presented in a professional manner based on public facility industry standards.
 2. Contractor agrees to provide all food and beverage services at all times for which service is requested or required.
 3. The City, in its sole discretion, may allow an outside concessionaire or caterer to provide services if the Contractor cannot perform its duties under this Agreement.
- B. Open Catering Program. The City reserves the right to allow an outside caterer to provide services under the City's Open Catering Program allowing pre-approved vendors to provide food and non-alcoholic beverage service to clients who rent space in the Center. Alcoholic beverages sales under the City's Open Catering program shall be retained by Contractor.
- C. Budget. Each fiscal year, but by no later than April 1st, Contractor shall prepare and submit for the City's approval, a preliminary annual budget ("Budget") for the following Fiscal Year showing all projections for total gross sales, gross receipts by source of sales, and projected Commission Fees, the Direct Operating Expenses, and Net Revenues for all sources of sales. The parties agree that the Budget must be approved by the City and shall coincide with the City's Fiscal Year.
- D. Reporting: Audits
1. Records. The Contractor agrees to allow the City to review and from time to time audit all records of Contractor relating to Gross Receipts, Direct Operating Expenses, Net Revenues, computation of receipts from Catering and Concession Sales and all related matters. Contractor shall maintain

records for a minimum of three (3) years following termination of this Agreement or a greater amount of time, if required by law.

2. Audits. An annual financial audit or audit review shall be performed at the direction of the City and submitted to the City by an independent accounting firm approved by the City with the independent firm providing an engagement letter approved by the City. The City will coordinate with the Contractor in order to schedule the audit at a mutually convenient time and will cooperate as needed to conduct the audit. The cost of the audit shall be considered a Direct Operating Expense to Contractor.
3. City Request. At any time during the term of this Agreement, the City or their designee may audit at the City's expense (except as otherwise noted below), with seventy-two (72) hours prior notice to Contractor, all accounting and financial records and procedures of the Contractor and all funds and accounts governed by this Agreement. The audit will take place during normal business hours at the Contractor's home office or such place as the records shall be kept and maintained by the Contractor. Any discrepancies shall be noted and, except in case of theft, criminal conduct amounting to a felony, actionable fraud (as opposed to negligent misrepresentation), willful or wanton misconduct or (with respect to handling funds or financial obligations), the Contractor shall have thirty (30) days within which to comply with proper procedures and reconcile all discrepancies. Failure of the City to note any discrepancies with respect to the Contractor's accounting and financial procedures shall not relieve the Contractor of its obligation to comply with the accounting requirements contained in this Agreement or with the provisions of this Agreement. If the audit determines that the computation of Gross Receipts contained in the Final Accounting is understated by 5% or more, affecting the commissionable amount which shall be properly accounted for as Gross Receipts and thereupon deposited and/or credited to the City's account, or if the Net Revenue is understated by 5% or more, the Contractor shall bear the costs of the audit.

VII. UTILITIES AND SANITATION.

- A. The City shall provide all utilities, electricity, gas, water, and repairs and maintenance to such services, not to include telephone/internet service or telephone/internet equipment, to Contractor as a Direct Operating Cost. The City is not responsible for the discontinuation or interruption of any utility service not caused by the action or omission of the City.
- B. Contractor shall be responsible for implementing an energy conservation and recycling program acceptable to the City to achieve savings on utilities and the environment.

- C. Contractor shall comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operation under this Agreement. Any violations of laws or regulations on City property must be reported to the City within 24 hours.

VIII. PERSONNEL

- A. Employment, Training, Supervision. The Contractor shall employ, train and closely supervise all persons necessary to the conduct of the business hereunder and will hire said persons with appropriate qualifications and experience in sufficient numbers to provide all services appropriate for the operations granted under this Agreement. Contractor shall maintain full responsibility for the actions of their employees and will be fully responsible for enforcing and implementing an appropriate background check requirement which conforms to State, Federal, Local guidelines. All persons hired and employed by Contractor shall be the sole and exclusive employees of Contractor and shall be paid by Contractor. Contractor will pay all applicable social security, unemployment, workers' compensation and other employment taxes. Contractor shall see that employees who serve and dispense alcoholic beverages shall be trained and educated as to alcohol abuse awareness and shall receive TIPS or T.E.A.M. training, or its equivalent. The City shall have the right to require Contractor to permanently remove or reassign any personnel if their performance is deemed unsatisfactory by the City. All costs of hiring, training and employment shall be a Direct Operating Expense to Contractor.
- B. Management Staff. Contractor shall provide a competent manager approved by the City. If a change in management takes place for whatever reason, Contractor shall have ten (10) days to provide an appropriate replacement, approved by the City. Contractor's manager shall be available at the Center at all times when Catering/Concessions are served and available. Contractor shall also provide management as requested by the City, to attend staff, City or Council meetings, provide customer service/sales, prepare for events, or any other service requested by the City which involves Catering or Concessions services. Contractor shall have a location office (four-wall space provided by the City at no cost to Contractor) with reasonable office hours to be mutually agreed upon by the parties.
- C. Employees. The Contractor shall not employ any person who shall use improper language or who acts in a loud or boisterous manner. Employees shall be clean, courteous, efficient and properly trained to maintain a first-class Catering/Concessions operation. Employees shall be attired in clean uniforms at all times when the Center is open to the general public, clients, or other patrons. Uniforms are required and shall have the approval of the City. All uniform costs shall be a Direct Operating Expense to Contractor.

- D. Contractor and the City's Director shall consult regularly and at a minimum, monthly, and discuss the operations of the Contractor, and to review said operations to ensure that all services are provided in a proper manner based upon accepted public facility industry standards.
- E. Contractor's employees and officers shall be admitted to the Center without payment of an admission fee while they are working. Entrance to the Center shall be designated by the City and shall be in such employee numbers as the Contractor may reasonably require for conducting its operations. The City reserves the right to have final approval as to the number of employees required to work during any such time at a Center event.
- F. All Contractor's working personnel shall be properly identified with name badges approved by the City.

IX. QUALITY OF FOOD AND BEVERAGE. Contractor shall, at its sole expense, order, stock, prepare, pay for and sell food and beverages at the Center. Title to said food and beverage shall be vested in the Contractor. Consumables shall be first quality, wholesome and pure, and shall be stored and handled with due regard for sanitation. All prices, specific brands, and quantities ordered and on hand (except alcoholic beverages to the extent provided by law) is subject to City's approval based on public facility industry standards.

- A. The City reserves the right to prohibit the sale if the City, in its sole discretion, concludes that quality, price and brands do not meet public facility industry standards which are comparable in like facilities. During all times at the Center, Contractor shall post signs and provide menus advertising the prices of items offered for sale. The signs and menus shall be tasteful, professionally designed and coordinated with the Center's signage, shall not be of a gaudy or offensive nature and shall require the City's approval before being posted. The City shall specify the location of all such signage. Cost for said signage and menus shall be a Direct Operating Expense to Contractor.
- B. On an annual basis, at least thirty (30) days prior to each anniversary date of the commencement of the term of this Agreement, a representative of each party shall meet for the purpose of discussing the prices then in effect. Said meeting is for the purpose of Contractor presenting the price lists to the City for approval. The City will respond and/or approve or reject such menu and prices within ten (10) business days.
- C. Except for those items expressly required by this Agreement to be provided by the City as described in Exhibit A, Contractor shall furnish all working capital, services, inventory, personnel, materials, tools, machinery, equipment, smallwares and other items necessary to perform Contractor's obligations under this Agreement.

- D. Any renovations or changes to event center facilities by Contractor, including but not limited to facilities and fixed equipment, must be approved by the City in writing prior to commencement of work and shall be at the Contractor's expense.

X. LICENSES, PERMITS AND TAXES

- A. Licensing. Contractor shall pay for and obtain all licenses and permits necessary for its operation including those required for the on-premises sale of liquor, beer and wine. Contractor shall keep these licenses and permits in force for the term of this Agreement.
- B. In the event of any suspension of the liquor license, Contractor shall, with the approval of the City, secure an interim caterer or concessionaire or make other arrangements to ensure the uninterrupted sale of alcoholic beverages. Should the City's commissionable revenue be adversely affected by a loss of Gross Receipts based upon the performance of the Interim Caterer/Concessionaire or the failure to maintain a liquor license, or should the City suffer a loss of revenues due to the loss of the liquor license, then the City shall be made whole by Contractor. Contractor and the City agree to cooperate to determine an interim caterer concessionaire to sell or dispense alcoholic beverages and, Contractor will make available, to the extent permitted by law, to the interim caterer or concessionaire, all supplies for alcoholic beverage service. If the Contractor's license to sell alcoholic beverages is cancelled or revoked, Contractor will be in breach of this Agreement and the City may terminate this Agreement and seek all proper damages.
- C. Contractor shall comply with applicable tax laws and regulations and pay to the State of Florida and other applicable taxing authorities, promptly when due, all taxes assessed against the Contractor, with respect to this Agreement, and Contractor's activities under this Agreement, by the State of Florida, St. Lucie County, or other taxing authority.
- D. Contractor shall pay as its own Direct Operating Expense all social security, unemployment insurance, retirement and other federal and state taxes which are required by law.
- E. Trademark Protection:
1. Contractor shall not commercially exploit by sale or otherwise any item or article which includes any marks of the CENTER and the City, the general design, logo, or confusingly similar variations of same without the City's prior written consent.
 2. The City shall not commercially exploit by sale or otherwise any item or article of Contractor which include the general design, logo, or

confusingly similar variations of the Contractor without Contractor's written consent.

XI. HOURS/DAYS OF OPERATION

Contractor shall keep the Catering and Concessions sales open during the hours reasonably required to adequately meet public and client demand, as determined by the City, and, if the City should request, Contractor shall close catering, concessions or alcohol sales.

XII. EQUIPMENT AND FACILITIES

- A. Equipment: The City shall furnish to Contractor for use in performing its obligation under this Agreement, fixed capital equipment and smallwares described in Exhibit A. This equipment and smallwares, including any replacements thereof, shall be the property of the City. The City may also provide additional equipment and items purchased by The City for Contractor's use. Other than for City of Port St. Lucie government agency purposes described herein, Contractor shall not remove any of the City's equipment or smallwares from the Center and shall not use any City equipment or smallwares in connection with any other business or operation.
- B. Warranty. The manufacturer's warranty shall be the only warranty on equipment provided by the City. The City makes no warranty on any equipment, and Contractor expressly recognizes this fact.
- C. Repair, Maintenance and Replacement
1. Contractor shall provide in the Budget, as a Direct Operating Expense, and on an annual basis, a maintenance fund which will be determined based on a percentage of anticipated annual Gross Receipts as mutually determined by Contractor and the City. This fund shall be reviewed and adjusted periodically to maintain its appropriate percentage of Gross Receipts. This fund shall be controlled by the Contractor and used with the City's approval, for the periodic maintenance (PM) of the City's equipment and facilities used by Contractor. Using this fund, Contractor shall provide, at its expense, normal and routine PM maintenance on all the City's equipment and facilities that are utilized in performance of their duties of this contract, including the equipment described in Exhibit A, used by Contractor in performing Contractor's obligations under this Agreement.
 2. Contractor shall perform proper use and care for the equipment and facilities with which it is entrusted under this contract and/or uses in the performance of its daily duties, as specified by equipment manufacturer's maintenance schedules.

3. Contractor must perform first level (PM) on all equipment, fixtures, and furnishings. PM includes daily cleaning and inspections of all equipment, fixtures, and furnishings. The Contractor must report in writing to the Project Manager of any equipment that is malfunctioning or not operating. At its sole discretion, the City shall have the authority to repair or replace any equipment.
4. Contractor's maintenance work and the frequency thereof will be conducted in accordance with a manufacturer maintenance program approved by the City.
5. The Contractor must replace or reimburse the City for any items that are either missing or have been damaged due to Contractor's negligence.
6. Contractor shall comply with the City's reasonable request with respect to procedures and practices governing the maintenance and repair of equipment and facilities. Both the City and Contractor shall have access to all equipment and facilities for purposes of inspection of equipment and facilities.
7. The City shall designate all areas for use by Contractor in performing Contractor's obligations under this Agreement.

XIII. APPROPRIATIONS

- A. Allocation of Payments. Payments by the Contractor to the City made pursuant to this Agreement shall be made in such manner as the City shall direct, either by check, draft, bank transfer or other manner.
- B. Contractor's Loss. In the event Contractor's funds are insufficient to satisfy the Contractor's Direct Operating Expenses, Contractor will pay, when due, sufficient amounts of money from its own other funds to satisfy its payment obligations hereunder. Notwithstanding the foregoing or any provision of this Agreement to the contrary, the City shall have no obligation of payment or otherwise for any service or program not provided by the City.

XIV. INDEMNIFICATION AND INSURANCE

The Contractor agrees to indemnify, defend, and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, reasonable attorney's fees, to the extent caused by the negligent act, recklessness, or intentional wrongful misconduct of the Contractor and persons employed or utilized, including any independent contractors or subcontractors by the Contractor in the performance of this contract. As consideration for this indemnity provision the Contractor shall be paid the sum of ten dollars (\$10.00), which will be added to the contract price, and paid prior to commencement of work.

The Contractor shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Contract, insurance coverage, limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Contractor are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by

Contractor under the Contract. The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any Insurance policy/coverage that it may obtain pursuant to any provision of this Contract will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project, any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy, or otherwise protect the interests of the City of Port St. Lucie as specified in this Contract.

Workers' Compensation Insurance & Employer's Liability: The Contractor shall maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Contractor shall maintain Commercial General Liability insurance, including Contractual liability, to cover the hold harmless agreement set forth herein. No exclusion for food contamination for food borne illnesses shall apply. Limits of coverage shall not be less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent contractors, fellow employees and volunteers. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, Certificates of Insurance and policies shall clearly state that coverage required by the Contract has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents and employees as Additional Insured for Commercial General Liability, Business Auto, and Liquor Liability policies. The name for the Additional Insured endorsement issued by the insurer shall read "**City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents the contract name and number shall**

listed as additional insured.” Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) day written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Contract to exceed the above limits, the Contractor shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Automobile Liability Insurance: The Contractor shall maintain Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Contractor does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Contractor to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation must be provided. Coverage shall apply on a primary and non-contributory basis.

Liquor Liability Insurance: The Contractor shall procure and maintain, and prior to commencement to this Contract, provide the City with evidence of Liquor Liability Insurance, for the serving and selling of intoxicating beverages, with limits of not less than \$1,000,000 per occurrence. City shall be listed as an Additional Insured. A waiver of subrogation is NOT required for this policy.

Waiver of Subrogation: The Contractor shall agree by entering into this Contract to a Waiver of Subrogation for each required policy. When required by the insurer, or should a policy condition not permit an Insured to enter into a pre-loss Contract to waive subrogation without an endorsement then Contractor shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Contractor for any and all claims under this Contract. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but not obligation, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of the Contractor to ensure that all independent contractors and sub-contractors comply with the same insurance requirements referenced herein. It will be the responsibility of the contractor to obtain Certificates of Insurance from all independent contractors and subcontractors listing the City as an Additional Insured, without the language when required by written contract. If contractor, independent contractor or subcontractor maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by contractor, independent contractor, or subcontractor.

The Contractor may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form," the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but not the obligation, to review, modify, reject or accept any required policies of insurance, including limits, coverages or endorsements, herein from time to time throughout the term of this contract. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self-insured retention or deductible exceeds \$5,000, The City reserves the right, but not the obligation, to review and request a copy of bidder's most recent annual report or audited financial statement.

A failure on the part of the contractor to execute the contract and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

Upon the expiration or earlier termination of this Agreement, Contractor shall pay all amounts then due or to become due to the City.

XV. ASSIGNMENT

This Agreement and any rights or duties hereunder shall not be transferred, conveyed, or assigned by Contractor without the written consent of the City.

XVI. LAWS, REGULATIONS AND DIRECTIVES

The Contractor will use the Center solely as specified in the Agreement and the business conducted hereunder will be operated in strict compliance with all laws, rules, regulations, statutes of the United States and the State of Florida and in compliance with all applicable health and fire codes and all applicable rules and regulations. Contractor shall not permit the Center, nor any part thereof, to be used for any unlawful purpose or in any manner as to injure persons or property in, on, or near the Center; and upon termination of this Agreement it shall deliver to the City the Center, equipment and fixtures in as good condition and repair as the same shall be found at the beginning of the term, subject only to normal wear and tear, loss by fire and commonly insured perils.

XVII. MISCELLANEOUS

- A. Entire Agreement. This Agreement sets forth the entire understanding of the parties with respect to the subject matter hereof and cannot be amended, modified, terminated, rescinded or extended except by writing signed by all parties hereto. Each provision of this Agreement is deemed to be material. Should any part, term,

or provision in this agreement be found to be illegal, unenforceable, ineffective, or in conflict with any federal, state or local law, the validity of the remaining portions of this Agreement shall not be affected thereby.

- B. **Applicable Law.** This agreement shall be construed and enforced in accordance with and governed by the laws of the State of Florida and ordinances of the City of Port St. Lucie, Florida and St. Lucie County, Florida. Venue shall be in a court of competent jurisdiction in St. Lucie County, Florida.
- C. **Sovereign Immunity.** The parties agree that the City is government entity required to comply with the laws of the State of Florida. The City's liability in all instances shall be limited to the monetary limits set forth in s. 768.28, F.S. nothing contained in this Agreement or related documents shall be deemed a waiver of the City's sovereign immunity, whether by contract or by law.
- D. **Relationship of the Parties.** The City and the Contractor have entered into this Agreement for the purpose of establishing an independent contractor relationship between the City and the Contractor. It is further understood and agreed by and between the parties that nothing herein shall constitute or be construed to be an employment, partnership, joint venture, or joint employer relationship between the City, its successors or assigns, and the Contractor, its successors or assigns. It is further agreed that the Contractor will provide its own workers' compensation insurance or self-insurance program as permitted under Florida statutes. The Contractor shall, subject to the terms and provisions of this Agreement, have complete and independent control and discretion over the operation of the Concessions. It is expressly understood that neither Contractor nor the City has the right to control, direct, or influence the labor relations policies or activities of the other, and that neither shall be considered to be the labor relations agent or representative of the other, and that, neither shall be responsible for the acts of the other's agents, employees or representatives which affect either party's respective employees.
- E. **Litigation.** Contractor shall be solely liable for, and shall independently undertake to defend, any and all unfair labor practice charges, grievances, judicial actions, or other employee or union claims, as well as general liability and personal liability, based on conduct alleged to have been committed by its employees, agents, or supervisors at any time. However, the City and the Contractor will cooperate in good faith in the investigation and defense of any unfair labor practice charge, grievance, judicial action or other employee or union claim which may be filed against anyone of them, jointly or separately.
- F. **Effectiveness.** The effectiveness of this Agreement is contingent upon an annual budget appropriation by the City Council. This Agreement shall terminate should the City Council not elect to fund or otherwise continue to operate the Center.

- G. Public Records. Contractor understands that City is a public entity whose records are available and open to the public for review and inspection. Contractor agrees to comply with public records laws, specifically to:
1. Keep and maintain public records required by the City to perform the service.
 2. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies. (See <http://dos.myflorida.com/library-archives/records-management/general-records-schedules>)
 3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Contractor's records under this Agreement include but are not limited to, supplier/sub engineer invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.
 4. Upon request from the City's custodian of public records, provide the City with a copy of the requested records or allow the records to be inspected or copies within a reasonable time at a cost that does not exceed the cost provided for by law. If Contractor does not comply with the City's request for records, City shall enforce the provisions in accordance with the contract.
 5. Ensure that project records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the does not transfer the records to City.
 6. Upon completion of the contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon the completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records kept electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City. **IF CONTRACTOR HAS QUESTIONS REGARDING**

THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

CITY CLERK
121 SW PORT ST. LUCIE BLVD.
PORT ST. LUCIE, FL 34984
(772) 871-5157_
PRR@CITYOFPSL.COM

7. Contractor's failure to provide the public records to the City within a reasonable time may subject Contractor to penalties under Section 119.10, Florida Statutes.
- H. Force Majeure. It is expressly understood and agreed that failure or delay on the part of either party hereto in the performance in whole or in part of the terms and conditions of this agreement will not constitute a breach hereof, nor a default hereunder, if such failure or delay is attributable to acts of God, fire, floods, inevitable accidents, or riots, insurrections, public commotion, strikes or labor disturbances, embargo, emergency or governmental order, regulations, priority or other limitations or restrictions, or acts of God interfering with personnel, sales, sources of supplies, production, transportation or delivery or for any cause beyond the control of either party.
- I. No Waiver of Rights. The failure of a party to enforce any obligation owed to it or seek a remedy available to it hereunder shall not constitute a waiver of any right or remedy then or subsequently available to said party to enforce the same or subsequent obligations or with respect to the same or subsequent defaults.
- J. Notices. Any notice to be given in connection with this Agreement shall be in writing and shall be deemed to have been given and delivered on the date delivered in person to a designated authorized representative on behalf of the entity, or upon the expiration of five (5) business days following the date of the mailed transmittal by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To: CITY OF PORT ST. LUCIE
ATTN: CITY ATTORNEY
121 SW Port St. Lucie Blvd,
Port St. Lucie, FL 34984

To: MIDFLORIDA EVENT CENTER
ATTN: EVENT CENTER DIRECTOR

9221 SE Civic Center Place
Port St. Lucie, FL 34952

To: CONTRACTOR:
Name, address

Either party may change its address for notice by giving the other party ten (10) days written notice of such change.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective duly authorized officers.

SIGNATURE PAGES FOLLOW

CONTRACTOR:
Huszar Family Catering dba Creative Catering

BY: _____

TITLE: _____

SIGNATURE: _____

DATE: _____

CITY OF PORT ST. LUCIE

BY: Matthew Shiver

TITLE: DIRECTOR OF PROCUREMENT SERVICES

SIGNATURE: _____

DATE: _____

EXHIBIT A - Kitchen Inventory

Category	Item	Quantity
FLATWARE RACK		
	B&B KNIVES	486
	SOUP SPOONS	487
	DINNER FORKS	960
	DINNER KNIVES	1970
	TEASPOONS	820
	DEMI	5
	SALAD FORK	1820
POTS/PITCHERS		
	COFFEE POTS - WHITE	12
	COFFEE POTS - BLACK	68
	PITCHERS	157
GLASSES		
	WINE	510
	CHAMPAGNE FLUTES	436
	MARTINI	384
	HIGH BALL	240
	ROCKS	304
	WATER GOBLET	1800
GLASS RACKS		
	WINE	21
	GOBLET	75
	MARTINI	24
	CHAMPAGNE	12
	ROCKS	19
	HIGH BALL	8
METAL BOWLS		
	2QT	4
	3QT	4
	5QT	3
	8QT	4
	13QT	2
	30QT	2
	20QT	2
	LARGE	
CUTTING BOARD/STANDS		
	CUTTING BOARD COLORS	16
	BOARD STANDS	2
CAMBRO STAND		
		6

CAMBRO COVER 5GAL		1
	2.5GAL	1
CAMBRO 5 GAL		1
	2.5GAL	1
	2 QT	2
	4QT	4
LID FOR 2/4QT		6
COCKTAIL TRAY		11
LG SERVING TRAY		62
DISHWASHER RACKS		6
FLATWARE RACKS		6
BUS PANS		21
CHAFERS		
	RECTANGLE	13
	ROUND	6
	SOUP	1
	AU JUS	4
CHAFER INSERT		
	RECTANGLE	50
	ROUND	16
LEXON 18X26		3
BARS		3
CLEANING EQUIPMENT		
	SQUEEGEE	2
	BROOM	2
	DUST PAN	2
	PUSH BROOM	1
TRASH CANS		
	MINI	4
	55 GAL	6
	32 GAL	2
	DOLLY	4
PLATES/CUPS/COVERS		
	DINNER	1818
	SALAD/DESSERT	1245
	B&B	925

	CLEAR GLASS	205
	SOUP CUPS	276
	COFFEE CUPS	1260
	PLATE COVERS	986
	SAUCER	1300
DOLLIES		
	POKER CHIP DOLLY	10
	RACK DOLLY	19
UTENSILS		
	41" STEEL PADDLE	1
	MEASURING CUPS METAL	1
	CARVING FORKS	4
	CHEF KNIVES	6
	SLICER KNIVES	4
	BREAD KNIVES	3
	1/2 OZ LADLE	3
	1 OZ LADLE	6
	2 OZ LADLE	12
	4 OZ	3
	24 OZ	1
	80 OZ	1
	DRESSING LADLE	12
	PUNCH LADLE	2
	ROLLING PIN	1
	PASTRY BRUSH	2
	FUNNEL	1
	PERF SPATULA	4
	METAL SPATULA	4
	PIE SERVER	4
	PIZZA WHEEL	3
	ICE CREAM SCOOP	10
	HAND GRATER	1
	MEAT Mallet	1
	ICE SCOOP 85 OZ	2
	ICE SCOOPS	4
	RUBBER SPATULA	6
	WOODEN SPOONS	6
	BAR JIGGER	2
WHISKS		
	10"	2
	10' FRENCH	2
	16"	2
	18"	2

	24"	1
SPOONS		
	11' SLOTTED	3
	SLOTTED	16
	SOLID	19
TONGS		
	12"	6
	16"	3
	PLASTIC SERVING	24
	METAL SERVING	24
EQUIPMENT		
	TILT SKILLET	1
	TILT KETTLE	1
	60QT HOBART MIXER	1
	CHAR BROILER	1
	ICE MACHINE	2
	HEATED CABINETS WIDE	5
	HEATED CABINETS UPRIGHT	2
	PRESSURE CLEANER	1
	ELECTRIC SLICER	2
	DISHWASHER CONVEYOR	1
	MICROWAVE	1
	TOASTER OVEN	1
	INSECT CONTROL FAN	1
	DUNNAGE RACK	2
	OVEN/STEAMER COMBO	1
	POWERWASH POT SINK	1
	ROBOT COUPE	1
	SORTING TABLE	2
	WORK TABLES	1
	WALK IN FREEZER	1
	WALK IN COOLER	3
	TABLE TOP CAN OPENER	2
	HAND SINK	5
	MOBILE SINK	2
	4 BURNER STOVE	1
	METAL CARTS	2
	BLACK CARTS	6

	GARBAGE DISPOSAL	4
	DOUBLE CONVECTION OVEN	1
	DOUBLE STEAMER	1
	DOUBLE FRYER	1
	POPCORN MACHINE	1
	MOBILE ICE BINS	2
	PANINI PRESS	1
	CAN RACK	1
	VITA MIX BLENDER	1
	PORTABLE COFFEE URN	1
	DISH TABLE CLEAN	1
	DISH TABLE DIRTY	1
	HEATLAMPS	4
	MANDALINE	1
	CASH REGISTERS	10
	CONVEYOR TABLE	1
INSERT PANS		
	HOTEL	85
	1/3 4"	6
	1/3 6"	6
	1/2 2"	24
	1/2 4"	29
	1/6 METAL	14
	1/6 PLASTIC	62
MUFFIN		
	FULL SHEET	199
	HALF SHEET	20
	10X18 GRATE	1
	16X24 GRATE	1
POT/PANS		
	40QT STOCK	1
	8.5 QT STOCK	1
	20QT STOCK	2
	4.5QT SAUCE	2
	8 1/4 QT BAIN	1
	12QT BAIN	1
	12" SAUTE	4
	8" SAUTE	3
	ROAST PAN	3
	PORTABLE STOVE	2
	RANDEAU BRAZIER	2
	COLLANDER	1
	CHINA CAPS	4

UTILITY RACKS		6
	WALL MOUNT BRACKETS	3
	WALL SHELF	1
	WALL SHELF W/ UTENSIL BAR	1
	2 TIER WIRE RACK	2
	3 TIER WIRE RACK	2
	FRUIT WIRE RACK	2
	GUM/MINT WIRE RACK	2
	BREAD BASKET BLACK WIRE RACK	180
4QT MEASURE CUP		1
	FREEZER THERM	1
	FRIDGE THERM	3
RUBBER BAR MAT		2
	BAR STRAINER	1
	ICE BUCKET	2
	WINE OPENER	6
WOOD CUTTING BOARD		6
	DEEP LEXAN	3
	PERF LEXAN	1
	SHALLOW LEXAN	3
COFFEE/CONDO HOLDER		4
	DOUBLE RING RISER	3
	ESCALADE RISER 3 TIER	3
	SOAP/SANI BUCKETS	5
	DRY BINS	4
	CLOCK	1
	CLOVER TIME CLOCK	1
	TABLE SIGN HOLDER	35
	TABLE CREAMERS	120
MISC		
LAKEVIEW PLATTER	REC 15X7	2
LAKEVIEW PLATTER	REC 21X11	2
LAKEVIEW PLATTER	OVAL	2
	2 TIER ESCALADE	4
HAMMERED TRAY	OVAL	8
HAMMERED TRAY	RECTANGLE	4
CLEAR PLATTERS	LG	11
	MED	12

	SMALL	9
	ALCOHOL CAGE	1
SQ CLEAR BOWL	SMALL	4
SQ CLEAR BOWL	MED	6
SQ CLEAR BOWL	LG	8
	ROUND CLEAR BOWLS	8
	ALCOHOL CAGE	1
	SHELVING UNITS	13
	METAL INSULATED CREAMERS	5
	STORE AND POUR (BAR)	6
	SUGAR CADDY	182
	TRAY JACK COVER	33
	TRAY JACK CHROME	40
	COFFEE DRIP TRAYS	35
	UTILITY DITRIBUTION POWER ISLAND	1