

FOOD AND BEVERAGE MANAGEMENT SERVICES REQUEST FOR PROPOSALS (“RFP”)

ISSUE DATE: **February 24, 2017**

PROPOSALS DUE: **11:00 a.m. on April 11, 2017** (the “Submission Deadline”)

INSTRUCTIONS: Proposers must submit (i) twelve copies of their complete proposal consisting of the information required herein plus (ii) one electronic copy of their proposal and (iii) one electronic copy of their completed Excel worksheet submitted on a flash drive in a sealed envelope in person, via mail or courier. Proposals received by email or fax will be rejected.

SUBMIT TO: Lisa K. Hargrove, General Counsel, Houston First Corporation (“HFC”), Partnership Tower, 701 Avenida de las Americas, Suite 200, Houston, TX 77010.

CONTACT INFO: Any questions concerning this RFP must be sent by e-mail to bids@houstonfirst.com. Questions must be received no later than **1:00 p.m. March 24, 2017**.

PURPOSE & OVERVIEW

Houston First Corporation requests responsive proposals from highly-qualified providers of food, beverage and concession services for certain exclusive food, alcoholic beverage and concession rights at such facilities and areas designated by HFC, subject to certain (i) buy-out provisions that may be utilized by non-preferred caterers, (ii) non-exclusive areas designated by HFC, such as the Partnership Tower, and (iii) occasional temporary alcohol permits granted to third parties.

Generally, the George R. Brown Convention Center (“GRB”), including Starbucks Café, Wortham Theater and the adjacent Fish Plaza, Jones Hall for the Performing Arts, Miller Outdoor Theatre, Talento Bilingue de Houston, Sunset Coffee Building, Jones Plaza, Root Memorial Square and the area from Polk Street to Rusk Street, located along the front of the GRB known as the “Plaza” will be included within the exclusive rights granted to the selected Proposer. However, within the GRB HFC has leased retail space to four restaurants: Grotto, McAlister’s Deli, Bud’s BBQ and Pappadeaux and these leases, along with a restaurant pad site located in the Partnership Tower and a proposed future restaurant pad site on Jones Plaza, are excluded from this solicitation. Proposers should be aware that facilities or designated retail spaces within a facility may be added or deleted to or from the Agreement throughout the term of the Agreement at the sole discretion of HFC.

Proposers must be able to meet the unique food and beverage requirements of facility guests, patrons, and licensees, including but not limited to, vegetarian/vegan, and special dietary food options. Proposers may also be required to set-up portable concessions and gift shops as directed, however, merchandise, souvenirs and any other non-consumables are excluded from this RFP.

RFP PACKETS

Copies of this RFP, including the Scope of Services, Agreement, and all necessary information, are available on-line at www.houstonfirst.com/dobusiness.

PRE-SUBMITTAL CONFERENCE

A pre-submittal conference will be held for all prospective Proposers at **10:00 a.m. on March 7, 2017** in Meeting Room 340 AB at the George R. Brown Convention Center, 1001 Avenida de las Americas, Houston, TX 77010. HFC will conduct a tour of its facilities, including the kitchen at the George R. Brown Convention Center, after the meeting. All Proposers are urged to attend.

LETTERS OF CLARIFICATION

Any revisions to be incorporated into this RFP, and all material questions timely received by HFC, will be confirmed in a written letter (“Letter of Clarification”) made available prior to the Submission Deadline at www.houstonfirst.com/dobusiness. When issued by HFC, Letters of Clarification shall automatically become part of this RFP and shall supersede any previous specifications or provisions in conflict therewith. By submitting a response, Proposers shall be deemed to have received all Letters of Clarification and to have incorporated them into the proposal. Verbal responses will not otherwise alter the specifications, terms and conditions as stated herein.

RESPONSE FORMAT

Although HFC prefers substance over form, Proposers must include the following information in their proposal:

- a. **Transmittal Letter:** Include a brief cover letter signed by a person authorized to make representations on behalf of the Proposer. Please include a direct phone number and email address for such authorized individual. Make a specific statement agreeing to comply with the terms and conditions of the RFP, including the Agreement (or identify any objections/exceptions with specificity in the Transmittal Letter or in a document attached to the Transmittal Letter).
- b. **Profile:** Detail Proposer’s history, methods, and strengths at meeting the needs of its clients.
- c. **Experience:** Discuss Proposer’s specific experience and major achievements, both previous and current, providing food and beverage services to clients at comparable facilities. Submit photographs, articles or other supporting information you desire to provide. Provide at least three current references, including contact names, phone numbers, and a brief description of the services completed by Proposer.
- d. **Financial Proposals:**
 - The Proposer shall submit its Management Fee and Incentive Fee in the Excel Spreadsheet attached as Exhibit A.
 - Should Proposer desire to propose Value Added Items, then attach a narrative to the Financial Proposal Form (Exhibit “A”) describing the cost to HFC of each such item and include the amortization schedule for each such item, the original cost of each item and any other information that Proposer desires to include.
 - HFC asks that Proposers also attach to the Financial Proposal Form and in Exhibit “D” a list of improvements that the Proposer believes HFC should make in order to enhance or improve the food services.

Note that Agreement will follow the guidelines of the 1986 Tax Reform Act for facilities financed with tax exempt bonds, as amended from time to time. The selected Proposer may earn a lump sum Management Fee and an Incentive Fee. Under the Tax Reform Act, the proposed Management Fee must be equal to or greater than 80% of total compensation including the Incentive Fee, for each

Agreement year.

Alternative financial proposals will not be considered by HFC.

- e. **Key Personnel:** Describe the background and experience of the key personnel who will be assigned to provide services for HFC and a brief summary of their qualifications. Complete and submit Exhibit C.
- f. **Diversity:** In accordance with the Diversity commitment outlined below, note all sub-consultants reasonably expected to be used and identify any Minority and/or Women-owned Business Enterprises or Historically Underutilized Businesses.
- g. **Uniforms:** Proposer must provide photographs and specifications of their proposed uniforms.
- h. **Creative Design Concepts:** Proposers should indicate their proposed design concepts including, but not limited to, equipment, décor, and any other information that indicates their unique approach.
- i. **Marketing Plan:** Provide Proposer's detailed marketing plan for soliciting and expanding the current catering business. Provide specific information on a program directed to the repeat catering customer. Included must be Proposer's outreach program to work with the resident theater companies (Ballet, Opera, Symphony, Society for the Performing Arts) for their receptions and galas.
- j. **Quality Control:** Proposer must have a food operation management plan and a sanitation plan that complies with the HFC's inspections and requirements. Explain how Proposer will continue to meet and exceed the required ratings level. At a minimum, Proposer must maintain a 90% favorable rating or better in the aggregate on all customer surveys, focus groups and secret shopper reports.
- k. **Catering Experience:** Proposer must indicate their experience in serving large meal functions, such as those served at the GRB. Proposer should cite specific banquets of 7,000-10,000 customers or more or three consecutive meals of 4,000 customers each, e.g. breakfast, lunch and dinner or three dinners over three consecutive days, etc. Provide date, location, customer contact, customer phone number, menu, price per person and service style, e.g. buffet, served.
- l. **List of Clients:** A list of other clients similar to facilities with a convention center and performing arts centers that Proposer serves or has served in the past five years. Please provide detailed information, e.g., name, address, and telephone number of the account, contact name, length of time, size of facilities, number and type of events, annual sales and attendance. Indicate what services are provided, i.e., cafeterias, catering, concessions, restaurants etc.
- m. **Organizational Plan:** An organizational chart showing all full-time and hourly positions. Include details of all bonuses, benefits, insurance, vacation, and sick-leave programs for which the full-time and hourly staff are eligible. Include a copy of the employee training manual, employee handbook, and drug-use policy. A resume including client references reflecting the experience, education, and performance record in the foodservice business of three proposed full-time general managers and one proposed candidate for all other management positions for the facilities for whom the HFC President & CEO will have the right of approval. Proposer must have their choice of the general manager attend all presentations required by the HFC President & CEO for selection of the Proposer. The general manager candidate may be interviewed privately prior to or during the Proposer's presentation.

- Detailed staffing charts for typical events at the Facilities, including a banquet for 250, a banquet for 3,500, a trade show and convention for 10,000 and an opera for 2,000 attendees. Include back-of-the-house and front-of-the-house employees for all areas, i.e., kitchen, commissary, concession stands, etc.
 - Recommended staffing guidelines for each job; e.g., 1 concession server per 100 seats, 2 banquet servers per 16 guests, 1 bartender per 75 guests, etc. Indicate proposed pay scales and gratuity allocation for all hourly employees.
 - Provide specific information on proposed minimum staffing guidelines for all front-of-house positions. Include: 1) table service breakfast, 2) table service lunch, 3) table service dinner, 4) buffet breakfast, 5) buffet lunch, 6) buffet dinner, 7) reception served, 8) hosted bar, 9) cash bar. Include both numbers of servers used per number of guests and number of captains per number of servers.
 - Describe unique talents that your key personnel have that will ensure that all services to guests are provided with the goal of ensuring that quality customer service is achieved and maintained throughout the term of the agreement.
- n. **Training Program:** Provide specific information on training programs, to include a sample outline of a quality service program that is currently used by Proposer and ongoing training offered to staff to assure programs are implemented consistently by staff and management.
- Provide specific information on recruitment, employment and training of all employees necessary for the successful operation of the Facilities. This training shall include all required alcoholic beverage training and certifications and other training as necessary or as requested by HFC.
 - Describe all of Proposer's available training programs including Proposers' current Alcohol Management and Customer Service Training Programs, that are regularly used at other accounts. Indicate the proposed general manager's experience in administering these training programs.
 - Describe Proposer's standard expectations of customer service protocols for Bar and Concession service and how you train your counter staff to work with consumers (guests) on an everyday basis.
- o. **Event Scenario:** Below is a short description of four upcoming fictional events at facilities. Provide sample menus, pricing and event planning that Proposer suggests to successfully accommodate the clients; Event Scenario: *(All of these events shall occur on the same day and time.)*
- In the ballroom, a reception including a plated dinner, hors d'œuvres, and open bar begins at 7:30 p.m. and attendees will be dressed in evening attire. Additionally, an orchestra will be playing on stage. Guarantee of 650 guests.
 - At the Wortham Theater a classical concert will be conducted Full *bar and food* operations will be required for an estimated attendance of 1,500. In addition, backstage catering for 50 all day long, including crew meals (breakfast, lunch and dinner) and the performers dressing room menu.

- Miller Outdoor Theatre is hosting 1,000 people for a country concert.
- p. **Menus and Branded Products:** Provide proposed menus for all food services in the Facilities, showing portion sizes and proposed selling prices in 2017 dollars. Include alcoholic beverages, catering and concessions. All catering prices must include the cost of linen, china and flatware. Pricing must be competitive with similar facilities in the region. Detail additional seasonal changes for the menus at the Theater venues and produce menus for each arts season.

Describe how branded products should be handled and how they will impact sales and profits. Detail other facilities where Proposer uses branded products and any unique financial arrangements with these brands.

- q. **Transition Plan:** Proposer must provide a transition plan with their proposal. This transition plan should be a complete account of the steps that the Proposer will take to ensure that the Proposer will be able to open a fully-functioning food and beverage operation at the conclusion of the current provider's contract on September 30th of 2017. The transition plan should also include a timeline which shows each of the steps to be accomplished and the approximate time to accomplish each step. The transition plan should begin on the earlier date that the contract is fully-executed and end on October 1, 2017 the day fully functioning food and beverage operation is opened for HFC. The plan shall demonstrate a smooth and timely transition for staff and transparent changeover for meeting planners. The details for this plan should be presented in both a narrative form and presented on a timeline, and must include the following elements:
- Provide specific information on staff notification;
 - Provide specific information on meeting planner notification;
 - Provide specific information on training and familiarization of Facilities, equipment, services;
 - Provide specific information on management on-site full time;
 - Provide specific information on initiation of marketing and sales program;
 - Provide specific information on Proposer and subcontractor notification;
 - Provide specific information on inventory of food and beverage facilities, fixed equipment and smallwares;
 - Provide specific information on any and all additional take-over procedures your company would implement; and
 - Since actual dates will depend on the date of contract execution, it is acceptable for the Proposer to indicate a number of days or weeks to accomplish the task, or to otherwise show the steps the Proposer will perform to be ready to provide services on October 1, 2017.
- r. **Event Information:** Provide samples of event order forms, daily and monthly statements, per capita sales, etc. that will be furnished to HFC during the term of the Agreement. Include forms from computerized cash registers.
- s. **Financial Statement:** A current audited financial statement, for the two most recent fiscal years of the Proposer, including balance sheet and profit and loss statements, prepared and certified by an independent Certified Public Accountant. The statement should also indicate the source and amount of financing required to fulfill the terms and conditions of this Agreement.

In the event the Proposer intends to subcontract or joint venture any of the proposed work stated in its technical proposal, the Proposer shall submit the information for proposed subcontractor or joint

venture. A joint venture must have formed prior to submitting proposal.

MANNER OF SELECTION

HFC intends to make a selection and enter into a contract with the Proposer providing HFC with the highest quality products and services. Proposals will be evaluated individually and may receive up to 100 points during this phase based on the following criteria:

- Financial Stability** **15 points**
(Including ability to provide required performance bond, proposed financial return to HFC, and scope of proposed capital investment.)

- Proven Track Record** **15 points**
(Including high quality food and beverage services at facilities of comparable size and complexity, including convention centers, theater facilities and public assembly facilities. Results of interviews and reference checks will be taken into account.)

- Demonstrated Level of Commitment** **20 points**
(Ability to provide all services and equipment as outlined in the Scope of Services, willingness to agree to all legal requirements included in the draft agreement and provision of all required information in Proposers response.)

- Diversity Participation** **10 points**

- Creativity** **20 points**
(Reflected in the proposal for unique operational plans, point of sale, menu, personnel training, uniforms, and related marketing and promotional ideas.)

- Key Management Personnel** **20 points**
The experience training, and past performance of those persons designated by Proposer as proposed management personnel.

Provisions of HFC’s Excel Worksheet must not be altered. Any erasure or alteration of figures or terms may invalidate the proposal on the item on which the erasure or alteration is made. Submission or attachment of company pre-printed forms containing alternative terms and/or conditions is not acceptable and may result in a proposal being determined as non-responsive.

INTERVIEWS

All Proposers will be interviewed. Interviews are anticipated to be scheduled during the week of April 24, 2017. Proposers should bring all appropriate executive management to the interview as well as their Executive Chef. Such interviews will be at no cost to HFC.

After the interviews, Proposers will be ranked in accordance with the criteria set forth above by a selection committee.

AGREEMENT TO CONTRACT

By submitting a response to this solicitation, Proposer agrees, upon notice of selection by HFC, to enter into an agreement substantially similar to the attached Agreement, including any exhibits attached thereto for seven years plus three one-year renewal periods.

This RFP does not commit HFC to award a contract, issue a purchase order, or to pay any costs incurred in the preparation of a proposal. HFC reserves the right, should it deem necessary in HFC's best interest, to do any or all of the following: (1) waive any irregularities in any of the responses; (2) accept any submittal or portion of a submittal; (3) reject any or all submitting responses; (4) cancel or make alterations to the entire process; or (5) ask for any clarifications.

EXCEPTION TO TERMS

If a Proposer takes exception to any terms or specification set forth in this RFP, then such Proposer agrees to submit a list of such exceptions as part of its Transmittal Letter.

WITHDRAWAL OF PROPOSAL

Proposals may be withdrawn only by a written request received by bids@houstonfirst.com prior to the Submission Deadline.

DIVERSITY COMMITMENT

The selected Proposer will be required to use good faith efforts to award subcontracts to diversity participants certified by any of the identified certification agencies as defined in the HFC Diversity Program Instructions to Contractors. Proposers may find HFC's Diversity Instructions to Contractors at www.houstonfirst.com under the Do Business tab. The specific goal for this proposal is 25% of Gross Receipts as defined in the Agreement. Although HFC encourages Joint Ventures between a prime contractor and a subcontractor to become the "prime" contractor, such Joint Ventures in and of themselves do not count toward the 25% diversity goal.

Proposers are required to comply with HFC's Diversity Program Instructions to Contractors; failure to comply may cause your response to be considered non-responsive.

Proposers should note if they are certified as a diversity participant in their proposal; however, such certification shall not lessen or otherwise alter the requirement to use good faith efforts to award subcontracts to diversity participants.

QUALITY OF SERVICES

The Proposer must be able to demonstrate upon request that it has satisfactorily performed services similar to the services specified herein. HFC shall be the sole judge as to whether the services performed are similar to the Scope of Services contained herein and whether the Proposer is capable of performing such services.

PERFORMANCE BOND

The Proposer selected by HFC shall furnish and maintain a performance bond or clean irrevocable letter of credit in the amount of \$500,000.00 throughout each year of the Agreement, renewable each year of the term, including extension terms, conditioned on the selected Proposer's full and timely performance of the Agreement. The bond must be issued by a corporate surety authorized and admitted to write surety bonds in Texas. If the amount of the bond exceeds \$100,000, the surety must be listed on the current list of accepted sureties on federal bonds published by the United States Treasury Department or reinsured for any liability in excess of \$100,000 by a reinsurer listed on the U.S. Treasury list.

RESTRICTIONS ON COMMUNICATIONS

From the date issued until the Submission Deadline, Proposers are directed not to communicate with HFC employees or HFC Board Members regarding any matter relating to this RFP, other than bids@houstonfirst.com and HFC representatives during the pre-proposal conference. HFC reserves the right to reject any proposal due to violation of this provision.

COLLUSION

The Proposer represents that the contents of its proposal have not been communicated, directly or indirectly, to any potential proposer and that its proposal is made in compliance with federal and State antitrust laws without previous understanding, agreement or connection with any competitor or other potential proposer. This is not intended to preclude subcontracts and joint ventures for the purpose of: a) responding to this RFP, or; b) establishing a project team with the required experience and/or capability to provide the services specified herein. Conversely, HFC can combine or consolidate proposals, or portions thereof, for the purposes mentioned herein.

GREEN ALTERNATIVES INCLUDING RECYCLING

GRB is a LEED Silver Certified Building. We have an extensive recycling program, and the food and beverage contract is a major part of the program. HFC is committed to buying products with recycled content or environmentally sustainable alternatives that meet Leadership in Energy and Environmental Design (LEED) compliance standards. If your company uses or offers any green alternatives that are an acceptable substitution for products required herein, please provide all relevant specifications and information with your response.

PUBLIC INFORMATION

As HFC is subject to the Texas Public Information Act (“TPIA”), all information submitted by Proposers is subject to release under the provisions of the TPIA set forth in Chapter 552 of the Texas Government Code. Each page where confidential or proprietary information appears must be labeled as such clearly and unambiguously. Proposers will be advised of any request for public information that implicates their materials and will have the opportunity to raise objections to disclosure with the Texas Attorney General at their cost and expense.

CONFLICTS OF INTEREST

Proposers are required to disclose any affiliation or business relationship that might cause a conflict of interest with HFC. The form is available online at: www.ethics.state.tx.us/forms/CIQ.pdf. By submitting a proposal, Proposers represent that they are in compliance with the requirements of Chapter 176 of the Texas Local Government Code.

ESTIMATED QUANTITIES NOT GUARANTEED

The estimated quantities specified herein are not a guarantee of actual quantities, as HFC does not guarantee any particular quantity of food and beverage services during the term of this Agreement. The quantities may vary depending upon the actual needs of HFC. The quantities specified herein are good faith estimates of usage during the term of this Agreement. Therefore, HFC shall not be liable for any contractual agreements or obligations the Proposer enters into with third parties based on HFC requiring all the quantities specified herein

EXHIBITS TO THIS RFP

- Exhibit A -- Excel Spreadsheet Financial Proposal Form
- Exhibit B – Projected Attendance for the First Agreement Year*
- Exhibit C – Proposed Management Staff
- Exhibit D – Capital Investment
- Exhibit E – Proposed Operating Proforma
- Exhibit F – Past Year’s Sales and Attendance.
- Exhibit G – Current List of existing Equipment**
- Exhibit H – Reference Form
- Exhibit I - Draft Food and Beverage Management Services Agreement

* Failure on the part of HFC to meet event projections shall not relieve Proposer from the obligation to comply with the Agreement.

** This equipment is owned by HFC.

EXHIBIT "A"
FINANCIAL PROPOSAL FORM
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

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EXHIBIT "B"
PROJECTED ATTENDANCE SALES
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

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EXHIBIT "C"
PROPOSED MANAGEMENT STAFF
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

.....

EXHIBIT "D"
CAPITAL INVESTMENT
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

.....

EXHIBIT "E"
OPERATING PROFORMA
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

.....

EXHIBIT "F"
HISTORICAL FINANCIALS
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

.....

EXHIBIT "G"
EXISTING EQUIPMENT
[SEE EXCEL SPREADSHEET FOR EXHIBIT DOCUMENT]

EXHIBIT "H"
REFERENCE FORM

Proposer must be able to demonstrate that it is currently providing, or has recently had, at least one contract as a prime supplier of food and beverage services similar in size and scope to the requirements of this RFP.

Provide at least three references below to establish that Proposer has experience performing food and beverage services in convention centers, theaters, or similar venues in excess of 1,000,000 square feet, which host heavily attended public events, including conventions, sit-down dinners, corporate meetings and similar events requiring frequent food and beverage services on a large scale. Proposer may, but is not required to, submit letters of reference in addition to the information provided herein.

- REFERENCE 1 -

Business Name: _____
Address: _____
Contact Name/Title: _____
Phone: _____ Fax: _____ E-mail: _____
Years services were provided: _____ Total square footage of facility: _____
Brief Description of Project: _____

-REFERENCE 2 -

Business Name: _____
Address: _____
Contact Name/Title: _____
Phone: _____ Fax: _____ E-mail: _____
Years services were provided _____ Total square footage of facility: _____
Brief Description of Project: _____

-REFERENCE 3 -

Business Name: _____
Address: _____
Contact Name/Title: _____
Phone: _____ Fax: _____ E-mail: _____
Years services were provided _____ Total square footage of facility: _____
Brief Description of Project: _____

EXHIBIT “I”
FOOD AND BEVERAGE MANAGEMENT SERVICES AGREEMENT

This Agreement for Food and Beverage Management Services (“Agreement”) is made by and between Houston First Corporation (“HFC”), a Texas local government corporation, whose address for notices is Dawn Ullrich, President & CEO, 701 Avenida de las Americas, Suite 200, Houston, Texas 77010 and [TBD] (“Caterer” or “Contractor”), whose address for notices is [TBD].

1.0 Introduction

Whereas, the City of Houston owns the George R. Brown Convention Center (“GRB”), Wortham Theater Center, Jones Hall for the Performing Arts, Miller Outdoor Theatre and certain other buildings and parks and has leased these buildings and areas to HFC to operate and manage; and

Whereas, HFC desires to enter into this Agreement with Caterer for the rights, both exclusive and non-exclusive as set forth herein, to serve food and beverages, including alcoholic beverages, and operate concessions at the Facilities, as defined below;

Now, Therefore, for and in consideration of the mutual promises, covenants, agreements, and benefits contained in this Agreement, HFC and Caterer agree to the following:

2.0 Definitions

Accounting Period means each calendar month within each Agreement Year.

Agreement means this contract executed between Caterer and Houston First.

Agreement Year means the period between January 1 and December 31 for every year until the Agreement terminates, with the exception of the first year which shall be for the period October 1, 2017 through December 31, 2018.

Alcoholic Beverages means all alcoholic drinks, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.

Amortization means the reduction of Caterer’s approved capital investment book value over a specified period of time, not to exceed seven years.

Branded Products means those Foodservice items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Caterer is required to pay royalty fees and/or shared advertising costs to the franchiser in consideration of the right to sell such items in the Facilities.

Public Food Sales means food and beverages, excluding alcoholic beverages, sold from permanent or portable cafeteria lines, concession stands or roving vendors to individual customers.

Caterer means that party or parties selected by Houston First to provide the services set forth herein.

Catering Sales means any pre-arranged Foodservice function of multiple customers, such as meals for conventions or meetings, where payment for the entire function rests with one individual or company.

Direct Operating Costs are the actual out-of-pocket costs of the Foodservice operation incurred at the Facilities, as approved by HFC, including, but not limited to, the actual expense of the product less corporate rebates on food supplies or Equipment purchased, on-site payroll, payroll taxes, fringe benefits and other

operating expenses, such as repairs and maintenance, cleaning and office supplies.

Direct Operating Costs do not include any corporate overhead or corporate administrative expenses or Late Fees, relocation expenses, except to the extent pre-approved by the President, or the cost of insurance premiums in excess of the amount described below. Caterer may set its own credit terms for accounts receivable; therefore, uncollected or bad debts are not allowed as a Direct Operating Cost or as a deduction from Gross Receipts, with the exception of when HFC has required Caterer to extend credit to a customer. Expenses related to criminal activities (e.g. theft, arson, vandalism, employee dishonesty) are not Direct Operating Costs. Direct Operating Costs not clearly related to the Food Service operation, such as travel expenses, professional services, and legal fees, are subject to the President's prior approval. Caterer shall provide written explanations to the President when seeking approval of such expenditures.

Personnel expenses shall not exceed the costs projected in Caterer's budget by more than three percent in any given Agreement Year, unless the variance is explained and approved by HFC. There is a cap on the cost of the Performance Bond and all insurance, including Workers' Compensation insurance: Caterer shall pay for, and not include as a Direct Operating Cost, any insurance and Performance Bond expenses in excess of two percent of Gross Receipts.

Equipment means all Foodservice furniture and machinery, except Smallwares and Leasehold Improvements, used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of products. Equipment shall not be affixed to the Facilities except by electrical or gas connections.

Excluded Facilities means the parking lots of the Facilities, backstage catering, performer, employee and/or athletic dressing rooms as well as the four restaurants sites located within the GRB known as the Grotto, Bud's BBQ, McAllister's Deli and Pappadeaux along with a restaurant site located in the Partnership Tower. A proposed restaurant pad site to be located on Jones Plaza, when developed, will also be excluded.

Facilities means the George R. Brown Convention Center ("GRB"), including the Starbucks Cafe, Partnership Tower, Wortham Theater Center and adjacent Fish Plaza, Jones Hall for the Performing Arts, Miller Outdoor Theatre, Jones Plaza, Root Memorial Square, Talento Bilingue de Houston, Sunset Coffee Building and the area from Polk Street to Rusk Street located along the front of the GRB known as the "Plaza." Facilities may be added or deleted to or from this Agreement throughout its Term at the sole discretion of HFC.

Foodservice(s) means all Foodservice sales and operations at the Facilities, whether Alcoholic Beverages, Branded Products, Public Food Sales, or Catering Sales.

Gross Receipts means the total amount of money, gratuities, service and rental charges received or charged by Caterer or any agent or employee of Caterer for all sales, cash or credit (whether collected or not), made as a result of the service rights granted under the Agreement, excluding only applicable sales taxes. For purposes of determining the Incentive, Subcontractor fees paid to Caterer rather than the Subcontractor's total Gross Receipts, are included.

Incentive means the percentage of Gross Receipts above a predetermined amount that Caterer may earn in an Agreement Year as provided herein. The amount of the Incentive may not exceed 20% of the Management Fee in an Agreement Year and is earned on an Accounting Period basis.

Late Fee is the charge assessed to any payments due HFC from Caterer after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of eighteen percent (18%). Late Fees

are payable by Caterer and not allowed as a Direct Operating Cost.

Leasehold Improvements means all equipment, fixtures, furnishings, finishes and construction affixed to the building, by more than an electrical or gas connection.

Licensee means any person or entity that may from time to time enter into any license agreement for the use of the Facilities for a particular purpose.

Management Fee is the lump sum retained by Caterer for managing the Foodservices, as provided in herein.

Net Profit means for any Accounting Period, the excess, if any, of Gross Receipts over the sum of applicable and/or prorated Direct Operating Costs, HFC-approved depreciation, the prorated Management Fee and the earned Incentive.

Non-exclusive Facilities includes the (i) Partnership Tower; (ii) the Founder's Salon and Green Room at the Wortham Theater Center during performances and activities of the Houston Grand Opera and Houston Ballet; and (iii) Green Room at Jones Hall during performances and activities of the Houston Symphony and Society for the Performing Arts.

Pre-opening Expense means the Direct Operating Costs incurred by Caterer between execution of the Agreement and the first Accounting Period with events.

President means the President & CEO of HFC, or such person as he or she shall designate.

Retail Services means the sale of souvenirs, gifts, and similar merchandise.

Smallwares includes all items used in the preparation and serving of Foodservices and Catering. All kitchen utensils, glassware, plates, serving trays, hotel pans, chafing dishes, coffee service equipment, rolling service tables, portable bars, dollies, pallet jacks, table cloths, table skirts, cloth napkins and table decorations.

Term means the sum of the Initial Term of seven years plus any Renewal Term(s).

3.0 Duties of Caterer

3.1 Caterer shall provide all labor, materials, equipment and supervision necessary to perform the services described in Exhibit "A."

3.2 Caterer shall coordinate its performance with HFC Facility Managers including the HFC Food and Beverage Director who will oversee and monitor the terms and conditions of this Agreement. Caterer shall promptly notify HFC, HFC Facility Managers and the HFC Food and Beverage Director of all significant events relating to the performance of this Agreement. Specifically, the HFC Food and Beverage Director's job responsibilities regarding this Agreement will include the following:

- a. Review daily sales and payroll reports;
- b. Review monthly financial statements for all HFC Facilities;
- c. Monitor planning of food service operations for upcoming events;
- d. Review menu pricing requests;
- e. Monitor and review proposed purchases of Smallwares and Equipment;
- f. Monitor Equipment storage areas and Equipment maintenance;
- g. Develop plans and locations for future retail locations within the GRB;

- h. Manage and review the Scorecard process and award; and
- i. Review and check quarterly Equipment and Smallwares inventory.

3.3 Caterer shall make customer satisfaction a priority in providing Services under this Agreement. Caterer shall train its employees to be customer service-oriented and to positively and politely interact with patrons and guests when performing contract services. Caterer’s employees shall be clean, courteous, efficient, and neat in appearance and committed to offering the highest quality of service to the public. If, in HFC’s opinion, Caterer is not interacting in a positive and polite manner with citizens, HFC shall direct Caterer to take all remedial steps to conform to these expectations.

4.0 Term

4.1 This Agreement is effective on October 1, 2017 (“Effective Date”) and remains in effect until December 31, 2024 (“Initial Term”), unless sooner terminated according to the terms of this Agreement.

4.2 HFC may renew this Agreement for three additional one-year terms by sending written notice to Caterer at least 30 days before expiration of the then current-term (“Renewal Term”).

4.3 HFC may, in its own sole discretion, extend the Term, including any Renewal Term, so long as the extension does not exceed 180 days (“Time Extension”). The Time Extension must be in writing, but does not require amendment of this Agreement.

5.0 Payment, Business Records and Accounting Systems

5.1 As consideration for the management of Food Services, Caterer shall be paid as follows:

- An annual Management Fee, as an allowable Direct Operating Cost, pro-rated on a monthly basis as set forth below; and

Management Fee Period	Management Fee
October 2017-December 2018	\$
January 2019-December 2019	\$
January 2020-December 2020	\$
January 2021-December 2021	\$
January 2022-December 2022	\$
January 2023-December 2023	\$
January 2024-December 2024	\$
January 2025-December 2025, subject to renewal	\$
January 2026-December 2026, subject to renewal	\$
January 2027-December 2027, subject to renewal	\$

An annual Incentive equal to a percentage of Gross Receipts, as set forth below, as an allowable Direct Operating Cost, pro-rated on a monthly basis. The Incentive shall be paid on a pro-rated basis during the year based upon the approved forecast submitted by Caterer pursuant to Section 5.10 below. Upon the conclusion of each Agreement Year, the parties shall conduct a true-up based upon the actual Gross Receipts recorded for such period. **

Incentive Categories	Incentive Percentage
Incentive for Gross Receipts from \$13 million to \$16 million	_____ %
Incentive for Gross Receipts from \$16 million to \$20 million	_____ %
Incentive for Gross Receipts from \$20 million and above	_____ %

** The first Incentive will be paid based upon a 15-month period. Thereafter, the Incentive will be paid based upon the calendar year.

The Management Fee may not be less than 80% of the sum of the Management Fee and the Incentive. The Incentive may not be more than 20% of the sum of the Management Fee and the Incentive.

Caterer shall send its invoice for the applicable Management Fee and Incentive to HFC no later than the fifth day of the month following the previous month end.

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

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

5.4 For each Accounting Period, Caterer shall provide to HFC a preliminary profit and loss statement by the ninth day of the following month, and shall also provide a final profit and loss statement to HFC, in a format approved by HFC, for each Accounting Period and submit same with Net Profits no later than the 20th day of the month following the previous month end. In any Accounting Period in which there are no Net Profits, Caterer shall accrue such loss until the next Accounting Period that has sufficient Net Profits to cover the losses. Caterer shall prepare an annual reconciliation of all losses or profits with a final financial statement and Net Profit payment for the last Accounting Period of each Agreement Year.

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

<u>Current Sales and Expenses</u>	<u>% of Sales</u>	<u>Period Budget</u>	<u>% of Sales</u>	<u>Year To Date</u>	<u>% of Sales</u>	<u>Budget To Date</u>	<u>% of Sales</u>	<u>Last Year Period</u>	<u>% of Sales</u>	<u>Last Year to Date</u>	<u>% of Sales</u>
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5.6 Alcoholic Beverage taxes and sales taxes should appear as a separate line item to be checked against net sales numbers for audit.

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

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

5.9 Caterer shall use HFC-compatible hardware, software and HFC-approved accounting software for all Catering proposals, contracts, invoices, and all accounting functions.

5.10 By August 1 of each Agreement Year, and for each Agreement Year thereafter, Caterer shall prepare and submit for HFC's approval, in a format approved by HFC, a forecast budget for its operation including anticipated sales, projected Gross Receipts and HFC's revenues by event for the period beginning on January 1 of the next calendar year and ending December 31 of such year.

5.11 Caterer shall provide HFC with sales and estimated payroll information by 10 a.m. on the day following each event. This report shall also include all sales including subcontractors at all Facilities.

5.12 Caterer must provide HFC with a list of all events at three points during the event booking process:

- a. a list of all potential/booked events for the future 12 months of the proposed budget year;
- b. a list of all potential/booked events for the upcoming three month forecast, which shall be updated monthly and presented at financial meetings; and
- c. a list of all events and their corresponding Gross Receipts that occurred for the previous month, to be presented during the monthly financial meeting.

5.13 Caterer shall maintain a separate commercial account in a bank approved by HFC and located in the City of Houston for all sales deposits from the Facilities. Cash shortages will be deducted from the Management Fee.

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

5.15 Caterer and its subcontractors must use computerized point-of-sale registers. HFC shall have access to all such sales and management reports including original POS reports.

5.16 An independent certified audit of Caterer's operations, by any accounting firm approved by HFC, must be submitted no later than 90 days after the end of each Agreement year. The cost of this audit is a Direct Operating Cost. If such audit shall show a deficiency in payments by Caterer for any Accounting Period covered, in excess of one percent (1%) of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid promptly by Caterer to HFC and not absorbed as a Direct Operating Cost.

5.17 Caterer and HFC shall inventory all Equipment, Leasehold Improvements, uniforms and Smallwares on a biannual basis to determine what replacements and repairs are required, and to adjust the depreciation schedule accordingly.

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

5.19 Caterer shall collect and promptly disburse all taxes required by Federal, State, and local authorities, and shall pay any and all applicable taxes relating to their operations, employees, Equipment, inventory or permits.

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

5.21 Credit and debit cards must be acceptable forms of payment for all sales. Merchant fees are a Direct Operating Cost.

6.0 Payment of Employees and Subcontractors

6.1 Caterer shall make timely payments in accordance with applicable State and Federal law to all persons and entities supplying labor, materials, or equipment for the performance of this Agreement, including Caterer's employees.

6.2 Failure of either Caterer or Caterer's subcontractors to pay their employees as required by law shall constitute a default under this Agreement for which Caterer and its surety shall be liable on Caterer's performance bond, if either Caterer or Caterer's subcontractors fail to cure the default under the Agreement.

6.3 Caterer shall defend and indemnify HFC from any claims arising out of Contractors failure to pay its subcontractors as required by law.

6.4 Caterer shall comply with the Patient Protection and Affordable Care Act. Upon request, Caterer shall provide to HFC plan documents and other related information satisfactory to HFC showing how and to what extent Caterer is in compliance with the Act.

7.0 Licenses and Taxes

7.1 Caterer shall solely be responsible for any necessary permits, licenses, fees, and inspections by government agencies necessary for proper execution and completion of the Services, including those required for the on-premise sale of Alcoholic Beverages.

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

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

7.4 Caterer shall make prompt payments of all taxes assessed by any taxing authorities. Caterer shall collect and promptly disburse all taxes required by Federal, State, and local authorities, and shall pay any applicable taxes related to Food Services sales, operations, Equipment, or inventory, as a Direct Operating Cost.

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

8.0 Representations and Warranties

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

8.2 With respect to any parts and goods it furnishes, if any, Caterer warrants: (a) that all items are free of defects in title, design, material, and workmanship, (b) that each item meets or exceeds the manufacturer's specifications and requirements for the equipment, structure, or other improvement in which the item is installed, (c) that each replacement item is new, in accordance with original equipment manufacturer's specifications, and of a quality at least as good as the quality of the item which it replaces (when the replaced

item was new), and will not cause any manufacturer's warranties to lapse or become invalid, and (d) that no item or its use infringes any patent, copyright, or proprietary right.

9.0 Diversity Commitment

Caterer shall make good faith efforts to award subcontracts equal to **25%** of the value of Gross Receipts to certified, diverse suppliers of goods and services in accordance with the Contractor Diversity Program established by HFC, which is incorporated herein by this reference. Contractor shall disclose to HFC the manner and extent it has made good faith efforts to achieve such goal and submit reports on forms provided by HFC.

10.0 Insurance

10.1 Caterer shall provide and maintain in full force and effect from the date of execution of this Agreement until final completion of the services, including all Renewals, extensions and amendments thereto, at least the following insurance and available limits of liability:

a. Commercial General Liability	Combined single limit of \$5,000,000 per occurrence, subject to a general aggregate of \$10,000,000
b. Excess Liability	Bodily Injury and Property Damage Combined Limits of \$5,000,000 each Occurrence and \$10,000,000 aggregate
c. ALL RISK covering Trade Fixtures And Equipment (including fire, lightning, vandalism, and extended Perils)	[Replacement Value]
d. Automobile Liability Insurance	\$1,000,000 combined single limit including Owned, Hired, and Non-Owned and Auto Coverage
e. Workers' Compensation	Statutory amounts for Workers' Compensation, Contractor is not allowed to self-insure Workers' Compensation
f. Employer's Liability	Bodily Injury by accident \$1,000,000 (each accident); Bodily Injury by disease \$1,000,000 (policy limit); and Bodily Injury by disease \$1,000,000 (each employee)
g. Liquor Liability Policy	\$5,000,000 per occurrence \$10,000,000 aggregate

10.2 Insurance may be in one or more policies of insurance, form of which is subject to approval by HFC. It is agreed, however, that nothing HFC does or fails to do with regard to insurance policies relieves Caterer from its duties to provide required coverage and HFC's actions or inactions will never be construed as waiving HFC's rights.

10.3 Liability for Premium. Caterer is solely responsible for payment of all insurance premium requirements.

10.4 The issuer of any policy (1) shall have a Certificate of Authority to transact insurance business in Texas or (2) shall be an eligible non-admitted insurer in the State of Texas and have an A.M. Best rating of at least A- with a financial size category of Class VI or better.

10.5 Each policy, except those for Workers' Compensation and Employer's Liability, must include an endorsement naming HFC and the City of Houston as additional insureds.

10.6 Caterer's insurance shall be primary and non-contributory to any insurance HFC may maintain. HFC shall not be obligated to maintain any insurance under this Agreement.

10.7 Waiver of Subrogation. Each policy must contain endorsement to the effect that issuer waives any claim or right in nature of subrogation to recover against HFC and the City of Houston.

10.8 Endorsement of Primary Insurance. Each policy, except Workers' Compensation policies, must contain an endorsement that the policy is primary insurance to any other insurance available to the additional insureds with respect to claims arising hereunder.

10.9 Subcontractor Insurance Requirements. Caterer shall require Subcontractors with whom it contracts directly, whose subcontracts exceed \$50,000, to provide proof of Commercial General Liability, Workers' Compensation, and Employer's Liability coverage that meets all the requirements of section; provided, however, that the amount must be commensurate with the amount of the subcontract, but not less than \$1,000,000 per occurrence.

11.0 Release and Indemnification

11.1 CATERER AGREES TO AND SHALL RELEASE HOUSTON FIRST CORPORATION, THE CITY OF HOUSTON, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, "INDEMNITEES") FROM ALL LIABILITY FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS CONTRACT, EVEN IF THE INJURY, DEATH, DAMAGE, OR LOSS IS CAUSED BY THE INDEMNITEES' CONCURRENT NEGLIGENCE AND/OR THE INDEMNITEES' STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, AS WELL AS FROM ALL LIABILITY FOR DAMAGES OR OTHER RELIEF ARISING UNDER FEDERAL OR STATE EMPLOYMENT LAWS RELATING TO OR INVOLVING PERSONNEL EMPLOYED BY CATERER UNDER THE CONTRACT.

11.2 CATERER AGREES TO AND SHALL DEFEND, INDEMNIFY, AND HOLD HOUSTON FIRST CORPORATION, THE CITY OF HOUSTON, AND THEIR AGENTS, EMPLOYEES, OFFICERS, AND LEGAL REPRESENTATIVES (COLLECTIVELY, "INDEMNITEES") HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LIABILITIES, FINES, AND EXPENSES (INCLUDING, WITHOUT LIMITATION, COPYRIGHT INFRINGEMENT, ATTORNEY'S FEES, COURT COSTS, AND ALL OTHER DEFENSE COSTS AND INTEREST) FOR INJURY, DEATH, DAMAGE, OR LOSS TO PERSONS OR PROPERTY SUSTAINED IN CONNECTION WITH OR INCIDENTAL TO PERFORMANCE UNDER THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, THOSE CAUSED BY OR RELATING TO: CATERER AND/OR ITS AGENTS', EMPLOYEES', OFFICERS', DIRECTORS', CONTRACTORS', OR SUBCONTRACTORS' (COLLECTIVELY, "CONTRACTOR") ACTUAL OR ALLEGED NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS; THE INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED CONCURRENT NEGLIGENCE, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT;

INDEMNITEES' AND CONTRACTOR'S ACTUAL OR ALLEGED STRICT PRODUCTS LIABILITY OR STRICT STATUTORY LIABILITY, WHETHER CONTRACTOR IS IMMUNE FROM LIABILITY OR NOT; AND ACTUAL OR ALLEGED VIOLATIONS OF ANY FEDERAL OR STATE EMPLOYMENT LAWS, INCLUDING WITHOUT LIMITATION, ALL CLAIMS AND CAUSES OF ACTION BROUGHT AGAINST INDEMNITIES BY CONTRACTOR'S PERSONNEL AND/OR GOVERNMENT AGENCIES ARISING FROM, RELATING TO, OR INVOLVING SERVICES OF CONTRACTOR'S PERSONNEL UNDER THIS AGREEMENT.

11.3 CATERER SHALL DEFEND, INDEMNIFY, AND HOLD THE INDEMNITEES HARMLESS DURING THE TERM OF THIS AGREEMENT AND FOR FOUR YEARS AFTER THE AGREEMENT TERMINATES. CATERER SHALL NOT INDEMNIFY THE INDEMNITEES FOR THEIR SOLE NEGLIGENCE. CATERER SHALL REQUIRE ALL OF ITS CONTRACTORS AND SUBCONTRACTORS TO RELEASE AND INDEMNIFY THE INDEMNITEES TO THE SAME EXTENT AND IN SUBSTANTIALLY THE SAME FORM AS ITS RELEASE AND INDEMNITY TO THE INDEMNITEES.

12.0 Indemnification Procedures

12.1 If HFC or Caterer receives notice of any claim or circumstances, which could give rise to an indemnified loss, the receiving party shall give written notice to the other party within 30 days. The notice must include a description of indemnification event in reasonable detail, the basis on which indemnification may be due, and the anticipated amount of indemnified loss. This notice does not stop or prevent HFC from later asserting a different basis for indemnification or a different amount of indemnified loss than that indicated in the initial notice. If HFC does not provide this notice within the 30 day period, it does not waive any right to indemnification except to the extent that Caterer is prejudiced, suffers loss, or incurs expense because of the delay.

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

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

13.0 Graphics and Signage

All graphics and signage in the Facilities identifying Caterer must be pre- approved in writing by HFC before installation. Caterer shall comply with all rules promulgated by the City of Houston and HFC regarding the placement of signs within or outside of the Facilities.

14.0 Performance Bond

Caterer shall provide a performance bond for \$500,000.00 on forms approved by HFC covering faithful performance of the services arising under the Agreement. The bond that is given or tendered to HFC must be (i) executed by a surety company that is authorized and admitted to write surety bonds in the State of Texas; (ii) on forms approved by HFC with no changes made by Contractor or surety, (iii) dated no more than 30 days old; and (iv) accompanied by power of attorney stating that the attorney in fact executing such

the bond has requisite authority to execute such Bond. Caterer shall deliver the required bond to HFC prior to commencing services hereunder.

15.0 Maintenance and Repair

15.1 Caterer shall promptly repair or cause to be repaired all damages to the Facilities, Equipment, doors, elevators, or other HFC property at the Facilities, at its own cost and expense, caused by the negligence of Caterer, its employees, agents, or subcontractors. Damages as used in this Section 15.1 shall not include normal wear and tear. Any such repairs shall be made to the reasonable satisfaction of HFC. Repairs and replacements of such finishes may be deducted from Caterer's Management Fee.

15.2 HFC may perform the needed maintenance or repair and charge Caterer HFC's cost, plus fifteen percent, if Caterer fails to perform the maintenance and repair specified in Section 15.1, after reasonable notice has been given to Caterer from HFC.

16.0 Compliance with Laws

16.1 Caterer shall comply with all applicable Federal, State, and local laws. Without limiting the provisions in the paragraph, Caterer shall comply with the Patient Protection and Affordable Health Care Act, as may be amended from time to time, and all rules, regulations, other statutes, and order of the U.S. Department of Health and Human Services and any other governmental entity with authority to promulgate rules and regulations concerning healthcare.

16.2 Caterer shall use the Facilities for no purpose other than the purpose specified herein and the business conducted thereunder will be operated in strict compliance with all applicable Federal State, and local laws and any other governmental authority, and with all health and fire codes and applicable rules and regulations issued pursuant to such laws.

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

17.0 Environmental Law

17.1 Caterer shall comply withal rules, regulations, statutes, or orders of the Environmental Protection Agency ("EPA"), the Texas Commission on Environmental Quality ("TCEQ"), and any other governmental agency with the authority to promulgate environmental rules and regulations ("Environmental Laws"). Caterer shall promptly reimburse HFC for any fines or penalties levied against HFC because of Caterer's failure to comply.

17.2 Caterer shall not possess, use, generate, release, discharge, store, dispose of, or transport any Hazardous Materials on, under, in, above, to or from the Facilities except in strict compliance with the Environmental Laws. "Hazardous Materials" means any substances, materials, or wastes that are or become regulated as hazardous or toxic substances under any applicable federal, state, or local laws, regulations, ordinances, or orders. Caterer shall not deposit oil, gasoline, grease lubricants or any ignitable or hazardous liquids, materials, or substances in the storm sewer system or sanitary sewer system or elsewhere on HFC property in violation of the Environmental Laws.

18.0 Drug Detection and Deterrence and Pre-Employment Screens

18.1 It is the policy of HFC to achieve a drug-free workforce and workplace. The manufacture, distribution, dispensation, possession, sale, or use of illegal drugs or alcohol by contractors while on HFC premises is prohibited. Caterer shall comply with this policy and shall subject its employees to drug testing if there is a reasonable suspicion that the employees may be abusing drugs or alcohol while working on HFC's premises. Caterer shall provide HFC with copies of all such drug tests upon request. If an employee's drug

test result is positive, Caterer shall prevent the employee with the positive drug test result from continuing to perform work related to this Agreement.

18.2 At its sole expense, Caterer shall conduct, or cause to be conducted, national and local criminal background checks on all temporary and permanent employees, **including employees of subcontractors**, before they are assigned to services at any of the Facilities. Background checks shall include a thorough criminal history check, including registered sex offender status, prior employment history check, inclusive of reasons for dismissals, if any, and level of education. Background checks shall be conducted in accordance with EEOC regulations including EEOC Enforcement Guidance entitled "Consideration of Arrest and Conviction Records in Employment Decisions under Title VII of the Civil Rights Act of 1964," as may be amended from time to time. Caterer shall provide evidence that the background checks have been conducted, both at the beginning of the Agreement and annually thereafter throughout the term of the Agreement. Failure to strictly comply with this requirement is grounds for immediate termination of the Agreement.

18.3 Caterer and subcontractors shall be responsible for all costs associated with the background checks. Caterer may also be required by HFC at Caterer's expense to conduct additional background checks for special events.

18.4 Subject to annual audits for both Caterer and subcontractors, Caterer shall develop and implement a written targeted screen of factors for Caterer's evaluation of the criminal background checks for Caterer's temporary and regular employees working at HFC Facilities. The factors shall include the nature and gravity of the offense or conduct, the time that has passed since the offense, conduct, or completion of the sentence and the nature of the job taking into account the public nature and usage of HFC's Facilities. Caterer shall submit the written targeted screen to HFC's General Counsel for approval.

18.5 If any of Caterer's employees and subcontractor employees are identified by the targeted screen, then Caterer shall conduct an individualized assessment of those so identified consistent with job relatedness and business necessity for the services to be performed.

18.6 Prior to employment, all permanent personnel hired and all temporary employees performing services more than three days per month or on a routine basis shall be drug tested at Caterer's expense. Subsequent drug testing, whether at random or for reasonable suspicion, shall also be conducted at Caterer's expense. Caterer shall ensure that drug testing services are available during both day and evening shifts. Any employee or applicant testing positive for drugs shall be dismissed and shall not be permitted to perform services at any HFC Facility.

Local criminal background checks and drug test results shall be subject to annual audits by HFC.

19.0 HFC's Duties and Rights

19.1 HFC shall perform the duties assigned to its responsibility as set out in the Scope of Services of this Agreement.

19.2 HFC shall have the right to enter the food and service areas and storage spaces at all times for the purpose of examining the state of repair and condition of the premises and the Equipment and for determining whether any terms, covenants, and conditions contained in this Agreement are being fully and faithfully observed and performed. HFC shall have the right to reject unacceptable standards of service and require that undesirable practices be discounted or remedied. Failure of Caterer to take appropriate action after notification from HFC shall be considered a breach of contract. Prior to implementation, HFC shall have the right to approve or reject the following:

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

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

19.4 HFC is not permitted unobstructed use, occupation, and control of the Facilities and ingress and egress for itself, its Licensees and the public. Representatives of HFC shall have the right to enter upon and have access to all spaces occupied by Caterer during the time events are in operation and all times when Caterer's employees are present.

20.0 Termination

20.1 Either party may terminate this Agreement for cause if the other party defaults and fails to cure the default within 30 calendar days after receiving written notice thereof. Default occurs if a party fails to perform one or more of its material duties under this Agreement. If a default occurs, then the injured party shall deliver a written notice to the defaulting party describing the default and the proposed termination date. The injured party, at its sole option, may extend the proposed termination date to a later date. If the defaulting party cures the default before the proposed termination date, then the proposed termination is ineffective. If the defaulting party does not cure the default before the proposed termination date, then the injured party may terminate this Agreement on the termination date.

20.2 No earlier than January 1, 2020, HFC may terminate this Agreement for its convenience at any time by giving 60 calendar days' written notice to Caterer. HFC's right to terminate this Agreement for convenience is cumulative of all rights and remedies which exist now or in the future. On receiving such notice, Caterer shall, unless the notice directs otherwise, immediately discontinue all services under this Agreement. As soon as practicable after receiving the termination notice, Caterer shall submit an invoice to HFC showing in detail the services performed under this Agreement up to the termination date. HFC shall then pay the amount due Caterer for services actually performed, but not paid previously, in the same manner as prescribed herein.

20.3 TERMINATION OF THIS AGREEMENT AND RECEIPT OF PAYMENT FOR SERVICES RENDERED ARE CATERER'S EXCLUSIVE REMEDIES FOR TERMINATION FOR CONVENIENCE BY HFC, WHICH DOES NOT CONSTITUTE A DEFAULT OR BREACH OF

THIS AGREEMENT. CATERER WAIVES ANY CLAIM (OTHER THAN ITS CLAIM FOR PAYMENT FOR SERVICES PERFORMED), IT MAY HAVE NOW OR IN THE FUTURE FOR FINANCIAL LOSSES OR OTHER DAMAGES RESULTING FROM HFC'S TERMINATION FOR CONVENIENCE.

20.4 If HFC terminates this Agreement prior to the end of the Initial Term and Caterer has paid HFC the Capital Investment, then HFC shall repay to Caterer the unamortized amount of the Capital Investment within 60 days after termination of this Agreement.

21.0 Miscellaneous

21.1 Force Majeure. Timely performance by both parties is essential to this Agreement. However, neither party will be liable for delays or other failures to perform its obligations under this Agreement to the extent the delay or failure is caused by an occurrence of Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean fires, floods, hurricanes, tornadoes, explosions, war, terrorism, and the acts of a superior governmental or military authority. The term Force Majeure does not include strikes, slowdowns or other labor disputes; changes in general economic conditions, such as inflation, interest rates, economic downturn, or other factors of general application; or an event that merely makes performance more difficult, expensive or impractical. Relief is not applicable unless the affected party uses due diligence to remove the Force Majeure as quickly as possible and provides the notice describing the actual delay or non-performance incurred within ten calendar days after the Force Majeure ceases. An occurrence of Force Majeure shall not extend the Term.

21.2 Inspections and Audits. Upon reasonable notice, either party shall have the right to examine and review the other party's books, records and billing documents which are directly related to performance or payment under this Agreement. Nothing in this Section shall affect the time for bringing a cause of action or the applicable statute of limitations.

21.3 Notices. Notices to either party to the Agreement must be in writing and must be delivered by hand, United States registered or certified mail, return receipt (or electronic return receipt) requested, Federal Express, UPS or any other national overnight express delivery service. The notice must be addressed to the party to whom the notice is given at its address set out in this Agreement or other address the receiving party has designated previously by proper notice to the sending party. Postage or delivery charges must be paid by the party giving the notice.

21.4 Independent Contractors. HFC and Caterer agree that they do not intend to form, and this Agreement shall not be construed as creating, a partnership or joint venture under any circumstances. Neither party hereto shall have any authority, in any manner or to any extent, to bind the other party. With respect to each other, the parties shall be independent contractors for all purposes.

21.5 Venue and Laws. Caterer shall strictly comply with all applicable laws, ordinances, codes, and regulations that affect performance by Caterer hereunder. This Agreement shall be construed in accordance with the laws of the State of Texas without regard to conflict of law principles. Any litigation in connection with this Agreement shall be in a court of competent jurisdiction in Harris County, Texas.

21.6 Non-Waiver. Failure of either party hereto to insist on the strict performance of any of the agreements herein or to exercise any rights or remedies accruing hereunder upon default or failure of performance shall not be considered a waiver of the right to insist on and to enforce by any appropriate remedy, strict compliance with any other obligation hereunder or to exercise any right or remedy occurring as a result of any future default or failure of performance.

21.7 Assignment. Caterer shall not assign this Agreement in whole or in part without the prior written consent of HFC.

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

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

21.10 Survival. The parties shall remain obligated to each other under all clauses of this Agreement that expressly or by their nature extend beyond the completion of the Project or termination of the Agreement.

21.11 Entire Agreement. This Agreement represents the entire and integrated agreement between HFC and Caterer and supersedes all prior negotiations, representations or agreements either written or oral. In the event of a conflict between the Agreement and the Specifications, this Agreement shall prevail. This Agreement may not be altered amended except in writing executed on behalf of all of the parties.

[Signature Block to Follow in Final Agreement]

EXHIBIT "1"

I. Scope of Services

A. License

1. HFC grants to Caterer the preferred right (the "License") to exclusively operate Food Services at the Facilities, subject to certain:
 - a. Exceptions described below that pertain to third party caterers;
 - b. Areas that are designated as Non-exclusive Facilities; and
 - c. Occasional temporary alcohol permits granted to third parties.
2. HFC may require Caterer to offer Public Food Sales in Jones Plaza, the Miller Outdoor Theatre, Root Memorial Square Park, and Fish Plaza during afternoon and evening concerts and other special events.
3. The location of all Food Service areas, whether temporary, portable or permanent shall be designated by HFC. Caterer shall acquire no right to any Facilities once assigned and HFC reserves the right to require Caterer to move such operations and Equipment to facilitate the needs of events.
4. HFC may require Caterer to provide Food Services to areas within Excluded Facilities on an event specific non-exclusive basis.
5. No off-site or subcontracting of sales by Caterer is permitted without the prior written approval of HFC.
6. Vending machines are excluded from this Agreement.

B. Other Caterers and Free Samples

1. Other caterers ("Non-preferred Caterers") may provide services, with the exception of Alcoholic Beverages, at the Facilities an unlimited number of times each year. HFC desires to maximize food and beverage services and revenues in all of its Facilities as well as to support the exclusive Caterer and the restauranteurs that are located along the Plaza, all of which contribute to HFC revenues. HFC will determine, on a case by case basis, what buy-out fee, not to exceed 30% (the "Buy-out Fee"), if any, will be required for a Non-preferred Caterer to provide services at the Facilities. Buy-out Fees will be included in the calculations of Caterer's Gross Receipts for purposes of determining the annual Incentive. If the Buy-out Fee is waived by HFC, then the total catering invoice paid to the Non-preferred Caterer (including the cost of food, linens, labor and decorations) will be added to the calculation of Caterer's Gross Receipts for purposes of determining the annual Incentive.
2. Caterer shall not interfere with the free distribution of food or drinks or any other items of any nature whatsoever, where such distribution has been authorized by HFC. At the discretion of HFC, free samples may be given away by, or on behalf of, or with permission of any person, entity or organization that has properly licensed the Facilities for a trade show, convention, exhibition, or other event of like nature.

C. Sponsored Events

1. All Catering events sponsored or co-sponsored by HFC, such as, but not limited to, tastings or marketing presentations and all events for other HFC departments shall be billed at actual cost of the product, service and direct labor, and shall not be included in Gross Receipts. All such costs will be credited against expense line items.
2. When HFC showcases Houston to convention, travel, or meeting industry associations (e.g., Meeting Planners International), Caterer shall use its own corporate sponsorship funds, up to \$25,000 per Agreement Year, to share in the cost of the meeting or event. These investment dollars will not be treated as Direct

Operating Costs. Caterer and HFC will mutually approve the sum of the corporate sponsorship funds prior to Caterer incurring or paying any expenses.

D. Franchise Food Service

1. Caterer shall have a franchise agreement to operate the Starbucks Café on the second floor of the GRB during events and at other times agreed upon by HFC and Caterer.

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

E. Retail Services

1. Except for the GRB Starbucks Café which Caterer shall operate, merchandise, souvenirs and any other non-consumables will not routinely be a part of this Agreement. HFC may require Caterer to operate Sundry and Gift Shops or portable carts during events. From time to time, HFC may require Caterer to provide souvenirs for special marketing efforts and promotions. Caterer shall provide the souvenir items to HFC at cost.

2. HFC shall select and make available to Caterer, subject to Caterer's reasonable approval, those areas, improvements, fixtures, personal property, and equipment including, without limitation, novelty stands, customer serving locations, warehouse facilities and storage areas, administrative offices, and portable serving locations (collectively referred to as the "Retail Premises") within the GRB, or other Facilities, from which Caterer shall provide the Retail Services. HFC shall provide the Retail Premises on a "turn-key" basis to Caterer, fully constructed, equipped, and finished to permit Caterer to provide the Retail Services in accordance with this Agreement. Revenue from the Retail Services shall be included in Gross Receipts.

F. Equipment

1. HFC agrees to provide all Equipment and improvements listed on Exhibit "B" of this Agreement. All other Equipment purchased by Caterer must, at the time of purchase, have been included in an annual Budget and shall be recorded as a Direct Operating Cost in the year in which purchased.

2. Upon purchase of any Equipment by Caterer, title shall automatically vest in HFC. Caterer shall execute a Bill of Sale (or other applicable documents as may be requested by HFC) to evidence such title transfer, at any time upon the election of HFC to take title to items.

3. Caterer and/or its employees shall not erect, maintain or keep at the Facilities, any structure or other equipment of any kind, except with the written consent of HFC.

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

II. Personnel

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

2. All Food Service employees are employees of Caterer and not HFC. Caterer shall at all times be an independent contractor, and the Contract shall not in any way create or form a partnership or joint venture

with HFC. No agent, servant, or employee of Caterer shall under any circumstances be deemed an agent, servant, or employee of HFC.

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

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

- a. General Manager
- b. Human Resources Manager
- c. Operations Manager (for the GRB)
- d. Banquet Manager
- e. Executive Chef
- f. Sous Chef
- g. Purchasing Manager
- h. One Concessions/Bar Manager for the Convention Center
- i. Two Concessions/Bar Managers for the Theater District
- j. Director of Sales
- k. Catering Managers (4)
- l. Controller/Office Manager
- m. Commissary/Kitchen Steward Manager

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

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

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

7. Caterer's employees shall be at all times neatly and cleanly uniformed in HFC approved uniforms for private receptions, dinners, galas, etc., and must meet grooming guidelines and appearance standards prescribed for such employees by Caterer and HFC.

8. Free parking is not available at most of the Facilities for Caterer's employees, but discounted daily contract parking is available at the theaters. As of the Effective Date of this Agreement, parking at the GRB is free for full-time employees in designated parking lots, subject to availability as determined by HFC in its sole discretion.

9. Caterer's wage scale, salary increases, and employee bonuses must be approved by HFC.
10. Cater shall meet with HFC periodically, as requested, to discuss labor costs and other expenses related to this Agreement. The parties will reach a mutual agreement about keeping Direct Operating Costs at an optimal level to provide a consistently high quality of services.
11. Caterer shall provide staffing schedules to HFC when requested, not more frequently than on a weekly basis.

III. Safety

1. Caterer shall develop and maintain all the necessary measures for the maximum safety of the Food Service operations, Caterer's employees, agents and subcontractors and the operations Equipment, improvements, Smallwares, uniforms, furnishings and decor.
2. Caterer shall not permit any waste, injury, or damage upon or to the Facilities or its Equipment and appurtenances.
3. All table coverings shall be flame retardant. The use of table coverings other than cloth must be approved in advance by HFC. Caterer must use the color of table coverings the Facility Manager requires.
4. All foods, drinks, beverages, confectionery, refreshments, and the like sold or stored for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to Federal, State, county and municipal laws, ordinances, and regulations. No imitation, adulterated, or misbranded article shall be sold or stocked for sale, and all product on hand shall be stored and handled with due regard for sanitation and in accordance with all health and safety laws and regulations.
5. Caterer must be able to safely transport, hold and merchandise all food products, including ice, to the theaters from the Convention Center in a sanitary and healthful manner approved by HFC's Health and Human Services Department and deliver products to sales areas, with utmost care to eliminate drips, spills, trash or damage to the Facilities.

IV. Operating Requirements

1. HFC shall issue reasonable rules and regulations for operation of the Food Services in the Facilities, and Caterer shall operate the Food Services in accordance with such rules and regulations, upon receipt of HFC's approval or said rules and regulations.
2. Caterer shall, on an annual basis, provide HFC with its price lists for all products and services, which shall be based on pricing competitive with hotels in the Houston area, such as the Hyatt, Hilton, Marriott Marquis, Reliant, Four Seasons, and Westin-Galleria hotels. HFC's approval is required for all pricing lists for the upcoming Agreement year. Caterer shall provide its price lists for the first Agreement year within 30 days following the Effective Date of this Agreement, with a suitable competitive pricing comparison to prices at local hotels.
3. Caterer will be required to provide or modify operations upon the request of any Licensee, when it has been approved by HFC, or is in the best interest of the Facilities or is necessary to comply with the terms of the license agreement between the Facilities and said Licensee, provided that none of Caterer's Equipment is utilized when Caterer is excluded from selling. The selling of specialty ethnic foods sold by local charitable organizations at community festivals is allowed, when approved by HFC.

4. If HFC seeks to bring a major political convention, NCAA tournament or other similar national or international events, Caterer will make such modifications to this Agreement that are required by HFC to obtain any such event.
5. HFC shall have the final approval on which suppliers, prices, portions and brands are used, and at no time will Caterer offer an exclusive right or agreement to any supplier.
6. Caterer and all of its subcontractors shall use computerized cash or point-of-sale registers, capable of accepting credit and debit cards at all sales locations. This includes portable and permanent concession stands, cafeterias, and lounges.
7. Caterer must provide printed menus approved by HFC, utilizing the Facilities' logos, used exclusively for the Facilities, in sufficient quantities for use by HFC and Caterer's marketing staffs, as part of the Direct Operating Costs. Caterer must also produce new menus for each new arts season.
8. HFC will set rooms with sufficient tables and chairs for each Catered function. Caterer must provide and set linen, skirting and place settings on a timely basis, as well as remove same immediately following each Catered event. Caterer will provide floral decorations and other types of decorations when and if requested by a client, at client's expense.
9. Caterer shall set up Equipment and Smallwares for all Food Service events. Caterer shall be responsible for setting up and tearing down and proper storage of all portable Equipment, including any work tables, if any, supplied by HFC.
10. Caterer is responsible for providing water service or bottled water for all meeting rooms at no cost to the customer, when specifically requested by HFC, as part of the Direct Operating Costs.
11. Caterer shall purchase computer equipment sufficient to communicate through e-mail with HFC personnel, as part of the Direct Operating Costs. HFC will provide connection to its e-mail system and training to use the e-mail software.
12. Caterer shall provide five-gallon water bottles to HFC for use in meeting room hallways.
13. Caterer is required to provide concession and catered function sheets to the Facilities representative for each and every event at least two weeks prior to the event.
14. Caterer will meet with representatives of HFC and resident companies periodically to discuss their event plans. When meeting with resident companies, an event manager must also be present.
15. In the absence of specific prior written approval by HFC, Caterer shall not operate any other business within the Facilities except as described herein. Caterer shall not interfere with any other contractor or employee of any other contractor working at the Facilities.

V. Advertising and Marketing

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

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

3. Caterer is required to actively solicit Catering Sales for the Facilities. On an annual basis, Caterer must provide HFC with a written marketing and Catering Sales program and budget with specific financial and operational goals and specific methods for attaining each goal. The plan must be in keeping with the goals of HFC and requires HFC's approval.

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

As a part of HFC's marketing efforts, HFC reserves the right and option to cross promote other dining and entertainment attractions in all Facilities.

VI. Quality of Service and Products

1. Caterer shall order, stock, prepare, pay for and sell appropriate pre-approved Food Service items. Caterer shall take full advantage of its national purchasing power and buying strength when buying Food Service Products to provide the lowest possible cost for all items purchased. All costs will be competitively bid and only Caterer's net costs will be charged. Caterer shall pass along 100% of all savings it accrues from discounts, rebates, and national volume purchasing or pricing, to provide HFC the lowest possible cost.

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

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

4. All products for sale shall be subject to inspection and approval by HFC. Rejected products shall immediately be removed from the Facilities and shall not be returned for sale. It is the intent of HFC to utilize Branded Products whenever it is in the best interest of HFC.

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

6. Catering Sales, including Alcoholic Beverages, will utilize permanent Smallwares, dishes, glassware and place settings. China and glassware are required at the theaters for bar and buffet service.

7. HFC requires Caterer to identify local products and vendors to utilize throughout the Facilities, whenever appropriate.

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

9. Caterer shall conduct on-line customer surveys on a quarterly basis and share the results of such surveys with HFC and Facility Management.

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

11. HFC shall decide any and all questions which may arise as to the acceptability of services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms and conditions of this Agreement and Scope of Services and all questions as to the acceptable fulfillment of this Agreement.

12. All foods, drinks, beverages, confectionery, refreshments, and the like sole or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the Federal, State and municipal food and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded article shall be sold or kept for sale and all product kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time.

13. It is HFC's intent to utilize Branded Products whenever it is in the best interest of HFC.

VII. Alcoholic Beverages

1. Alcoholic Beverages are to be offered for sale by Caterer to the extent permitted by applicable state and local laws, and subject to regulations established by the City. The final decision as to whether or not Alcoholic Beverages may be sold at an event, or in any designated area of the Facilities, shall be at the sole discretion of HFC. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of Caterer.

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

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

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

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

5. Periodically, HFC may ask Caterer to suspend its Alcoholic Beverage license to permit a third party to serve alcohol at a Facility.

VIII. Sanitation and Equipment Maintenance

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

2. Caterer must provide pest control, as a Direct Operating Cost, for all Facilities. Such services must be performed by a contractor licensed by the State of Texas and approved by HFC for each assigned area. HFC may request that Caterer perform extra pest control services at various Facilities. Any extra pest control services shall be provided by Caterer on a fully reimbursable basis and treated as a Direct Operating Cost. Caterer shall include documentation supporting the actual costs of the extra pest control services in its monthly reports.
3. Caterer shall maintain, as a Direct Operating Cost, all approved levels of all Equipment, Leasehold Improvements, uniforms and Smallwares, and Caterer shall require its subcontractors to utilize equipment, uniforms and smallwares of like quality. Caterer shall maintain a minimum of 5,000 HFC approved place settings of china and silverware.
4. Caterer shall maintain, as a Direct Operating Cost, all Equipment, Leasehold Improvements, uniforms, linens, and Smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance, replacement or repair necessitated by ordinary wear and tear. Replacements made by Caterer shall be Direct Operating Costs.
5. HFC may require the use of its in-house maintenance staff for the repairs and maintenance, if it is in the Facility's best interest.
6. All carpeted floor areas must be protected with plastic and/or cardboard when setting up portable stands, bars, or service areas. Caterer will be responsible for carpet damage caused by the negligence of Caterer, its subcontractors or agents. In addition, Caterer will be held responsible for damage to utility floor pockets, elevators, doors, or other Facility finishes, or other equipment caused by the negligence of Caterer, its subcontractors or agents. Damage, as used in this paragraph, shall not include normal wear and tear. Repairs and replacements of such items and finishes may be deducted from Caterer's Management Fee.
7. Caterer's employees and subcontractors will maintain a "Clean As You Go" approach in all areas of the Facilities they use. Caterer's cleaning responsibilities shall include, but are not limited to, dock areas, receiving areas, dumpster areas, Equipment storage, freight elevators, and hallways. Trash, spills, Food Service storage containers and other debris must be removed immediately to maintain the Facilities in a first class or tour-ready condition. In addition, all portable Equipment must be thoroughly cleaned before moving to storage areas.
8. Caterer shall deposit in receptacles provided by Caterer all waste, garbage and refuse that accumulates in the assigned areas. Garbage removal from all areas identified above shall be the sole responsibility of Caterer, as a Direct Operating Expense. All trash and garbage receptacles shall be cleaned and sanitized by Caterer to ensure a high standard of sanitation. Caterer shall provide for grease removal to avoid collection and spillage. Caterer shall provide its own sealed 30-yard compacter dumpster at the GRB and arrange for the emptying of the dumpster.
9. Caterer shall exercise due caution in complying with and observing all federal, state and local laws, ordinances and regulations as to sanitation, the purity of food, beverages, recycling or otherwise relating to its operation under this Agreement.

IX. Utilities

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

2. The cost of business-related telephone service, excluding personal phone calls, shall be a Direct Operating Cost of the operation. All personal calls must be reimbursed on a monthly basis.
3. Caterer shall bring its trash and garbage from all Food Service areas to the designated dumpster or recycling areas. Boxes and bottles must be taken to the designated dumpster on the loading dock at the Wortham Theater.
4. The cost to repair or replace any utility service or lines due to Caterer's negligence shall be Caterer's expense and not a Direct Operating Cost. Damage, as used in this paragraph, shall not include normal wear and tear. Caterer shall take all precautionary measures necessary to ensure that grease is not discharged into the sewers. Caterer's sewer lines shall be self-maintained as a Direct Operating Cost and shall be maintained to the satisfaction of HFC.
5. Caterer is responsible for complying with all recycling rules, regulations and laws of the City of Houston and/or appropriate governmental bodies, and the GRB LEED Certification program.
6. HFC 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, HFC shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence.
7. Caterer shall be responsible for any goods, merchandise or Equipment stored at the Facilities, and Caterer's insurance should cover any damages to Caterer's personal property resulting from a power failure, flood, fire, explosion and/or other causes.

X. Phase-Out Services

1. Caterer recognizes that the services provided by this Agreement are vital to the HFC's overall efforts to provide safe and pleasant convention and entertainment facilities; that continuity thereof must be maintained at a consistently high level without interruption; that upon expiration of the Agreement a successor may continue these services; that its successor caterer shall need phase-in training; and that Caterer must cooperate in order to effect an orderly and efficient transition.
2. Accordingly, Caterer shall be required to provide phase-out services for up to 30 days prior to Agreement expiration to its successor caterer at no extra charge to HFC. Phase-out orientation shall comprise a maximum of 30 working days, 8 hours per day. Orientation may include explanation of procedures, record keeping, reports, and procurement procedures, etc. Caterer shall be totally responsible for providing the services called for by the Agreement during its phase-out period. Caterer agrees to cooperate with its successor caterer in allowing as many personnel as practical to remain on the job in order to enhance the continuity and consistency of the services in the Agreement. Caterer agrees to disclose necessary personnel records and allow its successor to conduct on-site interviews with its employees, provided Caterer obtains the consent of said employees to disclose their records and to conduct such interviews and provided such disclosure and interviews are conducted in accord with all applicable laws, statutes, rules, regulations, and ordinances which have been passed, enacted or promulgated by any governmental body having jurisdiction over such matters. Additionally, at the termination or expiration of this Agreement, Caterer shall assign all catering contracts and catering deposits, for events that are scheduled to occur after the effective date of termination, to the succeeding caterer and communicate with clients only with HFC-approved materials.

XI. Additions and Deletions

1. HFC, by means of a written authorization to Caterer, may add or delete Facilities, or portions of Facilities, from this Agreement in its sole and absolute discretion as well as any items or services provided by Caterer that are reasonably related to the scope of this Agreement. Written notification of the added or deleted Facilities, items or services shall take effect upon Caterer's receipt of such notice or on such other day as specified therein.

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

XII. Performance Standards Performance

1. Caterer agrees to put 100% of its Incentive at risk, based on the performance standards as shown below, as may be amended from time to time by HFC, on a quarterly basis.

2. Caterer and HFC or Facility management staff will meet on a monthly basis, or as needed, to discuss review financial statements and Caterer's performance report.

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

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

A. External Customer Service

Criteria	Available Points: 15	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Achievement of “Satisfactory” or better for overall evaluation	5					
Evaluation and corrective action on unsatisfactory Responses	5					
Maintain a 90% or better rating on all customer surveys, focus groups and secret shopper reports	5					

B. Internal Customer Service

Criteria	Available Points: 5	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Training and improvement of service skills	2					
Quarterly department meeting participation	1					
Employee Recognition Program	1					
Participation in building committees and programs	1					

C. Management Level Staff

Criteria	Available Points: 5	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Annual Performance Reviews	2					
Building input and approvals of all new management staff	1					
Training and exposure to other accounts	1					
Weekly staff meeting participation	1					

D. Event Operations

Criteria	Available Points	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Availability of Sales and Operations staff	3					
Adequate staffing for events and during non-event days	2					
Skill level of staff meets industry standards	2					
Ability to accommodate staff special requests / flexibility	2					
Courteous and prompt delivery of services	2					
Professional appearance and conduct for on duty staff	2					
Quarterly refresher training of food and beverage staff	2					
Bi-annual review of equipment upgrades	2					
Regular subcontractors meetings	1					
Equipment inventory, as required for each Facility	2					

E. Sanitation / Cleanliness

Criteria	Available Points	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Satisfactory scores on all health inspections	4					
Implementation of a serve safe program	2					
Schedule for regular cleaning of targeted areas - hoods, grease traps, dishrooms, etc.	2					
Maintenance and upkeep of a "Food Handlers Card Book" or similar materials for all employees	1					

Concession areas maintained during and after event usage	4					
Loading dock and storage areas are orderly and kept clean	4					
Quarterly cleanliness walkthroughs completed with Facility staff	2					
Offering of a Serve Safe Class at least once per year	1					

F. Safety

Criteria	Available Points: 10	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Creation of a safety committee	3					
Representation on the building safety committee	3					
Maintenance of all safety equipment including First Aid Kits, Eye Washes, Kitchen Mats and Safety Devices and Guards on all equipment	2					
Training on use of equipment and safety practices in the work place	1					
Timely Accident Reporting	1					

G. Financial / Accounting

Criteria	Available Points: 10	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Operating Statements and revenue reporting generated on time	1					
Budget assessment and sales achievement	5					
Regional audit of operation performed	2					

Interaction between building accountants and the HFC Finance Dept. to maximize resources	1					
Development of a capital spending plan in conjunction with annual budgeting	1					

H. Marketing / Sales

Criteria	Available Points: 15	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
Annual marketing plan developed and implemented	3					
Development of a sales collateral materials	2					
Assist with planning and execution of Site Tours and FAM Trips	3					
Involvement w/ GRB and GHCVB Teams joint marketing efforts	3					
Continue to shop and monitor quality and pricing of local competitors	2					
Quarterly client parties for current clients and to market new clients	2					

I. Cumulative Totals

Available Points	Qtr. 1	Qtr. 2	Qtr. 3	Qtr. 4	Annual Average
100					