

FOOD AND BEVERAGE AGREEMENT

This Food and Beverage Agreement (“Agreement”) is made by and between Craft Culinary Concepts LLC (“Craft”), a Delaware limited liability company, acting by and through its duly authorized representative, and the City of Fort Worth, a municipal corporation, acting by and through its authorized Assistant City Manager (“City”). City and Craft may be referred to collectively hereafter as the “Parties.”

WHEREAS, City owns and operates an equestrian and event facility that is currently known as the Will Rogers Memorial Center (“WRMC”) located in Fort Worth, Texas;

WHEREAS, WRMC provides a multitude of services to meet the needs of respective clients;

WHEREAS, food and beverage concession and catering services are an integral part of the success of WRMC;

WHEREAS, Craft is in the business of managing and operating food and beverage concession and catering services at indoor and outdoor single and multi-purpose facilities; and

WHEREAS, City desires to engage Craft to exclusively manage and operate the food and beverage concessions and catering services at WRMC, subject to the terms and conditions contained herein.

THEREFORE, in consideration of the foregoing, the mutual covenants and promises set forth within this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

In addition to other terms defined in the body of this Agreement, the following terms have the definitions ascribed to them as follows:

“Additional Insureds” has the meaning set forth in Section 11.2

“Affiliates” means all entities, incorporated or otherwise, under common control with, controlled by or controlling Craft. For purposes of this definition, “control” means fifty percent (50%) or more of the ownership determined by either value or vote.

“Agreement” means this Food and Beverage Agreement.

“Buyout Amount” has the meaning set forth in Section 4.2(e).

“Catering Alcohol Sales” means any sales of alcoholic beverages, including distilled spirits, beers, malt beverages and wines, to multiple customers where payment for the entire

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function rests with one (or a limited number of) individuals or companies, typically where payment for such items has been arranged for in advance of such function. Catering Alcohol Sales does not include Sub-Contractor Sales.

“Catering Food Sales” means any sales of food or non-alcoholic beverages to multiple customers, where payment for the entire function rests with one (or a limited number of) individuals or companies, typically where payment for such items has been arranged for in advance of such function. Catering Food Sales does not include Sub-Contractor Sales.

“City Information” has the meaning set forth in Section 12.2.

“Concession Alcohol Sales” means the sale of all alcoholic beverages, including distilled spirits, beers, malt beverages and wines, at or from the WRMC, other than Catering Alcohol Sales; such as, by way of example only, sales from permanent or portable concession stands or roving vendors to individual customers. Concession Alcohol Sales does not include Sub-Contractor Sales.

“Concession Food Sales” means all sales of food and non-alcoholic beverages at or from the WRMC not including Catering Food Sales; such as, by way of example only, sales from permanent or portable concession stands or roving Crafts to individual customers. Concession Food Sales does not include Sub-Contractor Sales.

“Concessionaire Furnishings” means point of sale systems, and related equipment for restaurant sales transactions, and office and related furniture for Craft’s private office use.

“Director” means the Director for the Public Events Department of the City of Fort Worth, Texas or that person’s authorized representative or designee.

“Effective Date” has the meaning set forth in Section 4.1(a).

“Food and Beverage Areas” has the meaning given to such term in Section 2.1(b).

“Food and Beverage Services” means the business of managing and providing (or causing to be provided) food, food products, non-alcoholic and alcoholic beverages, in WRMC and at or by the Prime Time Grill Trailer.

“Force Majeure Event” has the meaning set forth in Section 13.2.

“General Manager” has the meaning set forth in Section 5.1(d).

“Gross Sales” means all revenues from sales by Craft (including sales of any assignee, subtenant, concessionaire, or licensee of Craft) based upon all business conducted upon or from WRMC, including off site services provided by the Prime Time Grill Trailer, whether such sales be evidenced by check, cash, credit, charge account, exchange, gift certificate, or otherwise, and includes, but is not limited to, the amount received from the sale of goods, wares and merchandise, including tangible property of every kind and nature, promotional and otherwise and for services performed. Each charge or sale upon credit will be treated as a sale for the full price in the month during which such charge or sale is made irrespective of the time when Craft receives payment

(whether full or partial) thereof; provided, however, if Craft does not receive payment pursuant to the terms of any charge or sale on credit, Craft may reduce Gross Sales by the amount of revenues not received in the month of failed collection (with inclusion of Gross Sales if later collected). Gross Sales also includes revenues generated from commissions paid to Craft by third-party caterers who serve events held at WRMC. "Gross Sales" does not include revenue generated by space rental at WRMC for food and beverage events. Discounts given by Craft to City, its agents, representatives, or employees or at City's request (including, without limitation, City's grant of Office Space to Craft as described below) are not included in Gross Sales. Taxes (including transaction privilege or sales taxes) and credit card fees are not included in Gross Sales. Gross Sales does not include the Management Fee.

"Investment" has the meaning given to such term in Section 3.2(a).

"Management Fee" has the meaning set forth in Section 3.1(b).

"Monthly Accounting Period" means each calendar month.

"Monthly Amortization Amount" has the meaning given to such term in Section 3.2(c) hereof.

"Operating Account" has the meaning given to such term in Section 9.1 hereof.

"Operating Expenses" mean (a) the Management Fee and (b) the cost to Craft of the sale of food and beverage items and the performance of Craft's duties under this Agreement, including without limitation (i) personnel and payroll costs, including applicable taxes, benefits, relocation costs, and bonuses with respect to all on-site management, administrative staff, independent contractors, consultants and all other on-site employees, (ii) product costs (net of the benefit derived from any rebates associated with its purchase of food, beverage and other concession and catering products), (iii) cost of permits and licenses, including without limitation the cost of securing all alcohol permits and licenses, (iv) all taxes paid by Craft hereunder on the sale of concession items, as described in Section 8.3 below, (v) equipment rental costs, (vi) actual cost of equipment repairs and maintenance performed by Craft or a contractor of Craft, (vii) insurance costs (which will be allocated by Craft to the WRMC in a reasonable and equitable fashion), (viii) office supplies, printing costs and postage, (ix) telephone charges, (x) cost of utilities, if applicable, (xi) cost of cleaning and sanitizing supplies and pest control, (xii) laundry costs, (xiii) armored car and other vehicle expenses, (xiv) legal, accounting, accounts payable processing and audit fees, (xv) cost of serviceware and paper supplies, (xvi) trash removal costs, (xvii) dues, subscriptions and membership fees, (xviii) travel, food and lodging costs, (xix) event security expenses, (xx) computer costs, (xxi) uniform costs, (xxii) advertising and marketing costs, (xxiii) cost of ice, (xxiv) payments to sub-contractors engaged by Craft hereunder, (xxv) decorating costs, (xxvi) payroll processing expense, (xxvii) bank charges, (xxviii) temporary housing and relocation expense, (xxix) employment agency fees, (xxx) bad debt expense, (xxxi) PCI-DSS compliance costs; (xxxii) time and labor management system costs, (xxxiii) cost of settling or defending claims asserted against Craft and arising out of its performance of this Agreement, except to the extent such claims result from breach of this Agreement by Craft, or Craft or its employees or agents' gross negligence or willful misconduct, (xxxiv) any other miscellaneous expenses related to the

foregoing, and (xxxv) the Monthly Amortization Amount. The Parties specifically acknowledge that the term "Operating Expenses" will not include any Start-Up Expenses, capital expenditures, debt service, and any expenses approved in advance by City and in excess of the Investment in order to provide an initial inventory of food and beverage serviceware and/or equipment, the cost and expenses for which will be borne solely by City (or if paid for by Craft, will be reimbursed to Craft by City upon submission of invoice or otherwise as specifically set forth herein).

"Operating Losses" are defined as the excess of Operating Expenses over Gross Sales.

"Operating Profits" are defined as the excess of Gross Sales over Operating Expenses.

"Operating Year" has the meaning set forth in Section 4.1(c).

"Prime Time Grill Trailer" shall mean Craft's existing "Prime Time Grill" barbecue semi-tractor and trailer. If the Prime Time Grill Trailer shall be damaged or become inoperable, or otherwise as agreed upon by the Parties, the Prime Time Grill Trailer may be replaced by other food and beverage services equipment as approved by the Parties, such approval not to be unreasonably withheld or delayed. Upon replacement, all references herein to the Prime Time Grill Trailer shall mean and refer to such replacement food and beverage services equipment.

"Primary Term" has the meaning set forth in Section 4.1(a).

"Profit Split" has the meaning set forth in Section 3.1(a).

"Renewal Term" has the meaning set forth in Section 4.1(b).

"Repair Fund" has the meaning given to such term in Section 3.1.

"Service Year" has the meaning given to such term in Section 3.1

"Smallwares" includes, but is not limited to, small appliances, pots, pans, utensils, serving dishes, tableware, and glassware.

"Start-Up Expenses" means all reasonable out-of-pocket expenses incurred by Craft in preparing to commence operations at the WRMC, including, without limitation, travel costs, expenses related to staffing the WRMC for the Food and Beverage Services, obtaining liquor and other required licenses and permits, and otherwise preparing to provide Food and Beverage Services.

"Stock Show" means the Southwestern Exposition and Livestock Show.

"Sub-Contractor Sales" means any and all net amounts paid to Craft by any third party sub-contractor of Craft in connection with sales made by any such sub-contractors at or from the WRMC.

"Term" has the meaning given to such term in Section 4.1 hereof.

ARTICLE 2
GRANT OF RIGHTS; SCOPE OF SERVICES

Section 2.1 Concession License.

(a) City hereby grants to Craft the exclusive right and privilege to provide Food and Beverage Services at the WRMC. Craft agrees to exercise the full Food and Beverage Services rights granted hereunder at all events in the WRMC, except for the Stock Show, in such manner and with such number of personnel as are necessary to provide adequate supplies and service of the food, beverage and other products described herein to patrons of the WRMC. City agrees that it will not, without the prior written consent of Craft, grant to any party other than Craft or a sub-contractor mutually agreed by City and Craft, the right to perform any Food and Beverage Services at or upon the WRMC.

(b) In connection with the foregoing grant of exclusive rights, City hereby licenses to Craft the concession stands, customer serving locations, food preparation areas, vendor commissaries, kitchen and warehouse facilities, and other areas related to the foregoing or reasonably required by Craft to perform the Food and Beverage Services at the WRMC (“Food and Beverage Areas”), together with the improvements, equipment, and personal property upon or within such areas, along with the non-exclusive right to use the concourses, spectator seating areas, parking areas, common areas, loading areas, walkways, and other public areas of the WRMC, solely for the purpose of providing Food and Beverage Services. Craft agrees to operate the Food and Beverage Areas with respect to all events at the WRMC in accordance with the terms of this Agreement.

(c) Craft will provide professional food and beverage and other limited support services for WRMC events and visitors using the existing facilities, coupled with the new investment and equipment provided by Craft and as detailed in this Agreement. The Food and Beverage Services will generally include the purchase, preparation, sales, marketing, and service of food, alcoholic and non-alcoholic beverages, and other related food items for WRMC catered and non-catered events. Concessions and alcohol are exclusives and Craft must carry the alcohol permit, or otherwise secure the right to sell and distribute alcoholic beverages pursuant to applicable law. Food and Beverage Services include the operation of permanent concessions stands, portable food and beverage outlets, and permanent food service outlets. Further the Food and Beverage Services include, but are not limited to:

- (1) *Engaging in collaborative conversations with WRMC staff about food and beverage planning for events at the WRMC.*
- (2) Strategic collaboration with the WRMC sales team.
- (3) General and special event catering.
- (4) Operation of temporary retail and moveable kiosks, including on the floor catering, mobile ordering platforms, and food trucks

(5) Sourcing locally-grown food

(d) In compliance with the “open” catering policy at WRMC, once adopted by the City Council and as may be amended, Craft will provide catering services on a non-exclusive basis. “Open” means that any catering company that complies with the venue’s catering policy can compete for business at WRMC. “Catering” is defined as the private sale of food and beverage sales to organizations hosting events in WRMC facilities for events like banquets, galas, private meetings, etc. Craft will assist in: Monitoring small business and business equity participation under the current “open” catering policy between February 14, 2022 and December 31, 2022; and developing the details of a potential Catering Partnership Program for future consideration. Should modifications to the catering policy become necessary, Craft and City will make recommendations to the City Council as to the terms of any amendment to the policy and its impact upon this Agreement. If City Council approves those recommendations, Craft agrees to abide by the modifications to the current “open” catering policy as may be approved by the Fort Worth City Council and this Agreement will be modified accordingly by written amendment. If the City Council chooses not to approve the Parties’ recommendations, then the policy in effect as of the execution of this Agreement, or the latest amendment, will control.

(e) The rights granted under this Agreement exclude any period of time that the WRMC is leased to and used by the Stock Show for the annual stock show and such other non-ticketed, private events that the Stock Show may from time-to-time host within the WRMC. All such rights will be granted to the Stock Show. Craft will have the right to enter into any agreements with the Stock Show to perform its services during the time that the Stock Show occupies the WRMC. Any revenues received by, or operating expenses incurred by, Craft during the time that Craft performs any services for the Stock Show will not count toward this Agreement. Further, if Craft is hired by the Stock Show, no Gross Sales or Operating Expenses incurred by Craft performing services during its stock show license period will be attributed to the calculation of the Profit Split under this Agreement.

Section 2.2

(a) Craft will have an exclusive right to use and occupy a designated portion of the WRMC to serve solely as office space to a full-time manager of Craft who will be responsible for overseeing and managing the Food and Beverage Services to be provided at the WRMC and for no other purpose or use. The exact location of the Office Space within the WRMC shall be determined by the Director in that person’s sole and absolute discretion and may be subject to change at any time by the Director; provided, however, that such Office Space must be able to be secured by Craft for the protection and confidentiality of all books and records of Craft; and further provided that the Office Space must be located to enable the General Manager to be able to efficiently oversee Craft’s operation.

(b) At all times during the term of this Contract, the Office Space shall remain under the control of City, and Craft will not be responsible for any maintenance of the Office Space. Craft shall be responsible for providing all reasonable and/or necessary supplies and/or

equipment to allow Craft's employees to operate in and use the Office Space, with the cost of such supplies and/or equipment being an Operating Expense.

(c) Upon identification and review by Craft, Craft shall take all portions of the Office Space and all appurtenances in "AS IS" condition without any express or implied warranty on the part of City. Upon identification and review by Craft, Craft shall accept the Office Space in its present condition, suitable for the purposes intended, and with an acknowledgement that it is thoroughly familiar with such condition by reason of a personal inspection and without reliance on any representations by City as to the condition of the Office Space or their suitability for the purposes intended. Craft's taking possession of the Office Space will be conclusive evidence that: (i) the Office Space is suitable for the purposes and uses for which the same is licensed; and (ii) Craft waives any and all defects in and to the Office Space and all appurtenances thereto. City shall not be liable to Craft or its invitees, licensees, subcontractors, or guests for any damage to any person or property due to the acts or omissions of Craft, or its subcontractors, invitees, licensees, and guests. Craft shall not be liable to City or its invitees, licensees, subcontractors, or guests for any damage to any person or property due to the acts or omissions of City, or its subcontractors, invitees, licensees, and guests.

(d) City will be responsible for all expenses associated with water, sewer, electricity, gas and waste disposal utilities involving existing service lines. City will be responsible for all other communications utility expenses, including local and long distance telephone charges, internet charges, and cable television charges. Any additional electrical or utility service and/or service lines required by Craft will be at the sole expense of Craft. Craft shall not do, or permit to be done, anything in or on any portion of the WRMC or bring or keep anything therein or thereon which will in any way conflict with the conditions of any insurance policy on the WRMC or any part thereof. Craft shall not cause in any way an increase in the rate of fire insurance on the buildings or property. Craft agrees that no decorative or other materials shall be nailed, tacked, screwed, or otherwise physically attached to any part of the Office Space without written approval from the Director, which approval shall not be unreasonably withheld.

(e) Craft agrees that it will not make or suffer any waste in, on, or to the Office Space. Craft shall not make any alterations to the Office Space without first obtaining written approval from the Director. Craft further agrees to maintain and pick up litter attributable to Craft and perform minor housekeeping as necessary to keep the Office Space in a clean, orderly, and sanitary condition at all times. City shall perform any major cleaning, e.g., strip, buff and wax floors, at standards and frequencies that may be established by City. Craft will remove garbage and deposit in dumpster in accordance with procedures established by the Director.

(f) City reserves to itself, its officers, elected officials, agents, assigns, and employees the right to enter the Office Space at any time for the purpose of ascertaining compliance with the terms and provisions of this Contract; making inspection of the Office Space; and maintaining and making repairs and improvements to City-owned property. In addition, City does not relinquish the right to control the management of the Office Space or the right to enforce all necessary and proper rules for the management and operation of the same. Members of City's police, fire, parks, code compliance, and other designated departments shall have the right at any time to enter any portion of the Office Space (without causing or constituting a termination of this

Agreement) for the purpose of inspecting the facilities, maintaining City-owned property, and performing any and all activities necessary for the proper conduct and operation of public property, provided that no unreasonable interference with Craft's use of the Office Space is caused by such access. City will at all times have keys with which to unlock all doors and gates associated with the Office Space, and Craft will not change or alter any lock without City's permission and shall provide new keys to City within forty-eight (48) hours of making any approved change.

ARTICLE 3 COMPENSATION

Section 3.1 Fees and Profit Split.

From the Gross Sales, Craft will fund into a separate, City designated, account 2.5% of Craft's Gross Sales (the "Repair Fund") on a monthly basis in arrears with a final annual reconciliation within sixty (60) days after the end of the immediately preceding Service Year. The Repair Fund is to be used by City for repairs, maintenance, and replacement of items at the WRMC related to the Food and Beverage Services provided by Craft. All Repair Funds will be placed in a specially designated repair, maintenance, and replacement fund for the WRMC. City agrees to use the Repair Fund in compliance with the terms of this Agreement, as needed, and in a timely manner. Each "Service Year" means the 12-month period following the date of this Agreement. For example, the first 12-month period following the date of this Agreement will be the first Service Year; and the next 12-month period will be the second Service Year.

- The Repair Fund will be, at all times, considered City funds. Any funds in the specially designated account will remain in that designated account and will be expended and disposed of in accordance with the terms of this Agreement. Craft will keep complete and accurate records of all funds retained in, and expenditures from, the account. All deposits in the account will be secured by eligible securities to the extent and in the manner required by applicable law, including but not limited to, Texas Government Code Chapter 2257. Craft will ensure that the account is a joint account to which City is an account holder.
- On or before the 20th day of each and every month, Craft will furnish the Director with a statement detailing all retained revenue and expenditures from the Repair Fund account.
- In the event of expiration or early termination of this Agreement, or upon dissolution of Craft, either voluntarily or involuntarily, all Repair Funds and any assets acquired with Repair Funds during the term of this Agreement, will immediately vest to City. Craft will take all necessary measures to ensure that all such assets and funds are transferred to City in a timely manner.

(a) Other than for the Reserve Months (described below), Craft will pay City, on a monthly basis, 90% of its Operating Profits that it receives from the Food and Beverage Services provided pursuant to the terms of this Agreement ("Profit Split"). However, in no event will City's 90% share of the Operating Profits include more than 49.99% of alcohol gross sales from the Food and Beverage Services performed by Craft. During the Reserve Months (to include October, November, December, January and February), Craft will retain all Operating Profits in reserve, with, as applicable, Operating Losses being deducted from the Operating Profits during

the Reserve Months. On or before March 20 of each year during the Term of this Agreement, a reconciliation for the Reserve Months will occur, with Craft paying City 90% of the Operating Profits (net Operating Losses) for the Reserve Months. As clarification, Craft will provide City with a monthly summary of Operating Profits (or Operating Losses) for each of the Reserve Months, but no fee will be paid to City based on the Operating Profits during the Reserve Months.

(b) City will pay Craft, on a monthly basis, a management fee equal to 2.75% of Gross Sales ("Management Fee"), payable to Craft, with an annual reconciliation no later than sixty (60) days after the end of each Service Year during the term of this Agreement.

(c) The Parties will conduct a settlement within thirty (30) days of the end of each Operating Year at which time each will account to each other for any amounts that were underpaid or overpaid by the Parties from such Operating Year.

(d) Craft will pay, when due, all sales taxes (and any other taxes due) from food and beverage services that are attributable to Craft's operations at the WRMC.

(e) Craft will provide monthly usage and financial reports with metrics to be determined mutually by the Parties.

Section 3.2 Investment by Craft.

(a) Craft will invest at least \$750,000.00 in mutually agreed upon new food and beverage-focused capital investments within 18 months of executing this Agreement and \$1,300,000 in in-kind investment via the provision of the Prime Time Grill Trailer upon commencement. The Parties agree that nothing in this Agreement shall be deemed or construed to transfer title or ownership of the Prime Time Grill Trailer from Craft to City. Craft's \$750,000 investment, once accepted by City, will be amortized in equal monthly amounts over a period of 7 years. The actual amount invested by Craft hereunder is referred to herein as the "Investment". In the event additional amounts are required to complete the food and beverage facilities, or to provide equipment or smallwares so as to enable Craft to perform the Food and Beverage Services to a reasonable standard, City will be solely responsible for such amounts. City and Craft will mutually agree upon the specific equipment and improvements to be purchased or made with the Investment, as well as the location for such improvements or installation of such equipment.

(b) Once identified, the specific equipment and other related tangible personal property to be purchased with the Investment will be set forth in a writing to be signed by the Parties and updated by the Parties from time to time as necessary to reflect any replacements or substitutions thereof. All equipment, improvements and other items purchased with the Investment, including any replacements or substitutions thereof, will be owned by Craft until the Investment is fully amortized or payment of the Buyout Amount (as described below). City agrees to execute such documents as Craft will reasonably request evidencing Craft's ownership interest in such improvements and equipment, including financing statements. For the sake of clarity, nothing in this paragraph will be construed as requiring Craft to replace any equipment or other personal property at its own cost.

(c) The monthly amortization amount (“Monthly Amortization Amount”) will be an Operating Expense. City covenants and agrees not to permit any liens or encumbrances to attach to the improvements and equipment purchased with the Investment, and hereby waives any right to attach any claim, lien, or attachment to such improvements or equipment. Once the Investment is fully amortized, or final payment is made to Craft, title to the equipment and improvements will become vested in City, and Craft agrees to execute all necessary documents to evidence same. The rights of Craft set forth in this Section 3.2 will be in addition to any other rights of Craft at law or in equity.

Section 3.3 Planning and Budgeting

(a) Craft will coordinate with City and the WRMC team on planning and budgeting based on City’s planning and budgeting calendar. Craft and City will coordinate joint discussions concerning capital projects such that any such project may be submitted for consideration in annual budgets and City’s Capital Improvement Plan

(b) City and WRMC will deliver a projected calendar of events and attendance to assist with operating budget discussions. The Parties will discuss projections for concessions and catering revenues and expenses, resulting in a profit share projection, on a timeline that complies with City’s annual budgeting calendar.

Section 3.4 Marketing Incentives

Craft, in collaboration with WRMC and the City, may offer licensors of ticketed entertainment events at the WRMC Auditorium a marketing incentive. The nature of the incentive will be determined by the parties on a case by case basis, but approval for the marketing incentives will not be unreasonably withheld or delayed. The agreed marketing incentive for any event must be in writing and signed by authorized representatives of both City and Craft.

Any incentive offered by Craft pursuant to this Section 3.4 will be considered an Operating Expense and accounted into the monthly profit share calculation as described by this Article 3.

ARTICLE 4 TERM AND TERMINATION

Section 4.1

(a) Term. This Agreement will be binding on last date of execution by the Parties and effective beginning on January 13, 2022 (“Effective Date”) and will remain in effect for a period of ten (10) years (“Primary Term”), subject to early termination as provided herein. The “Term” shall include the Primary Term and all Renewal Terms. The expiration of this Agreement, or earlier termination of this Agreement in accordance with the terms of this Agreement, shall be the end of the Term.

(b) Renewal Term. Following the Primary Term, City and Craft may agree, by written mutual consent, to renew this Agreement for five (5) additional one-year terms (each a

“Renewal Term”). Notification of intent to renew this Agreement (the “Intent to Renew Notice” must be given in writing to the other Party at least sixty (60) calendar days prior to the expiration of the Primary Term, or any then active Renewal Term. If, within 30 days of receipt of the Intent to Renew Notice, the other Party does not provide written rejection of the renewal, this Agreement will renew for a Renewal Term.

(c) Each twelve (12) month period during the Term commencing on the Effective Date and continuing on the anniversary of such date will be referred to herein as an “Operating Year”.

Section 4.2 Termination.

(a) Breach. If either Party (the “Breaching Party”) commits a material breach of this Agreement, the non-breaching Party (the “Non-Breaching Party”) may give written notice to the Breaching Party that describes the breach in reasonable detail. The Breaching Party must cure the breach sixty (60) calendar days after receipt of notice from the Non-Breaching Party, or other time frame as agreed to by the Parties. If the Breaching Party fails to cure the breach within the stated period of time, the Non-Breaching Party may, in its sole discretion, and without prejudice to any other right under this Agreement, law, or equity, immediately terminate this Agreement by giving written notice to the Breaching Party.

(b) Fiscal Funding Out. In the event no funds or insufficient funds are appropriated by City in any fiscal period for any payments due hereunder, City will promptly notify Craft of such occurrence and this Agreement will terminate on the last day of the fiscal period for which appropriations were received without penalty or expense to City of any kind whatsoever, except as to the portions of the payments herein agreed upon for which funds have been appropriated. As specific clarification, sufficient funds have been appropriated by City to fund the Buyout Amount, and such appropriation shall be maintained throughout the Term of this Agreement.

(c) Duties and Obligations of the Parties. In the event that this Agreement is terminated prior to the end of the Term, City will pay Craft for services actually rendered up to the effective date of termination and Craft will continue to provide City with services requested by City and in accordance with this Agreement up to the effective date of termination. Upon termination of this Agreement for any reason, Craft will provide City with copies of all books and records relating to the operation of the food and beverage services under this Agreement. In the event Craft has received access to City information or data as a requirement to perform services hereunder, Craft will return all City provided data to City in a machine-readable format or other format reasonably deemed acceptable to City. Craft will have 3 business days to move out after contract termination and will promptly clean (or cause to be cleaned) all spaces under Craft’s control to industry standards. Craft will ensure all equipment is returned in working order. All furniture, fixtures, and equipment, save and except for any unamortized investment improvements as provided by Section 3.2, will become the property of City.

(d) Performance Bond. Craft will post a performance bond in the amount of \$25,000.00 in a form reasonably satisfactory to City, to secure Craft's performance under this Agreement. The performance bond must list City as a dual obligee, and City will be entitled to claim against the bond for any amount owed under this Agreement.

(e) Amortization. If, before the expiration of the 7-year amortization period (as described in Section 3.2), this Agreement is terminated for any reason other than as the result of Craft's uncured breach (including, without limitation, if Craft terminates this Agreement because of City's breach), City will reimburse Craft for the unamortized portion of the investment ("Buyout Amount"). City acknowledges and confirms that the City Council has approved and provided proper appropriation for the Buyout Amount

ARTICLE 5 PERSONNEL

Section 5.1 Generally.

(a) It is expressly understood and agreed that Craft and its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers operate as independent contractors as to all rights and privileges and work performed under this Agreement, and not as agents, representatives or employees of City. Subject to and in accordance with the conditions and provisions of this Agreement, Craft has the exclusive right to control the details of its operations and activities and is solely responsible for the acts and omissions of its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers. Craft acknowledges that the doctrine of *respondeat superior* does not apply as between City and its officers, elected officials, representatives, agents, servants and employees, and Craft and its employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers. Craft further agrees that nothing herein will be construed as the creation of a partnership or joint enterprise between City and Craft. It is further understood that City will not be considered a Co-employer or a Joint employer of Craft or any employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers of Craft. Neither Craft, nor any officers, agents, servants, employees or subcontractors of Craft will be entitled to any employment benefits from City. Craft is responsible and liable for any and all payment and reporting of taxes on behalf of itself, and any of employees, representative, agents, servants, officers, contractors, subcontractors, and volunteers.

(b) City, through its authorized representatives and employees, has the sole and exclusive right to exercise jurisdiction and control over City employees. Craft represents that all of its employees and subcontractors who perform the Food and Beverage Services under this Agreement will be qualified and competent to perform the Food and Beverage Services set forth herein. Craft agrees to use reasonable and prudent judgment in the selection and supervision of such personnel, and will strive to employ persons who are courteous and efficient, and who will not use improper language or act in a loud or boisterous manner while performing duties at the WRMC.

(c) The Director of the Public Events Department or that person's authorized representative reserves the right to refuse to permit any employee of Craft from providing the Food and Beverage Services set forth herein for any reason, provided that if the conduct of the employee is correctable, such employee shall have first been notified of his or her objectionable conduct and shall have had the opportunity to correct it.

(d) Craft will employ as part of its personnel at the WRMC an individual with appropriate experience to serve as a full-time General Manager of Food and Beverage Services ("General Manager"). Hiring of the General Manager by Craft will require the prior approval of City, which approval will not be unreasonably withheld or delayed. The General Manager will have general supervisory responsibility for Craft at the WRMC and will be responsible for day-to-day operations of the Food and Beverage Services, supervision of Craft employees, and management and coordination of all activities associated with the Food and Beverage Services.

(e) Craft will ensure that its non-management employees performing the duties of Craft at the WRMC will be neatly attired in clean, commercially-attractive uniforms which will be subject to the approval of City, such approval not to be unreasonably withheld or delayed. Craft will train all such employees so that they are aware of the high standards for cleanliness, courtesy and service required by Craft.

(f) All personnel engaged by Craft to work at the WRMC will be admitted to the WRMC without payment of any admission fee, at an entrance to be designated by City. All such personnel will have the right to park at the WRMC subject to similar parking fees paid by City employees. Such fees may be considered an operating expense for purposes of this Agreement.

(g) Craft warrants that Craft will not commit any discrimination against or segregation of any person or group of persons on account of any prohibited category or legally protected class.

Section 5.2 Non-Solicitation.

(a) During the Term and for a period of one (1) year after the end of the Term, City and its affiliates will not, without the prior written consent of Craft, solicit for employment by City, or encourage to cease rendering services to Craft, any management-level employee of Craft with whom City has had dealings by virtue of the engagement of Craft hereunder. In the event of a breach of this provision, Craft will be entitled (in addition to any other rights and remedies which Craft may have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain City from continuing such breach.

(b) During the Term and for a period of one (1) year after the end of the Term, Craft will not, without the prior written consent of City, solicit for employment by Craft, or encourage to cease rendering services to City, any management-level employee of City with whom Craft has had dealings by virtue of the engagement of Craft hereunder. In the event of a breach of this provision, City will be entitled (in addition to any other rights and remedies which City may

have at law or in equity, including money damages) to equitable relief, including an injunction to enjoin and restrain Craft from continuing such breach.

ARTICLE 6

INVENTORY; EQUIPMENT; SPONSORSHIPS; UTILITIES; PCI COMPLIANCE

Section 6.1 Inventory. Craft will order, stock, prepare, pay for and sell quality food, beverage and other concession and catering products. Consumables will be first quality, wholesome and pure, and all food and beverage merchandise on hand will be stored and handled with due regard for sanitation. Craft will have sufficient amounts of product prepared and an inventory on the premises so as not to run out of product during an event at the WRMC. During all events at the WRMC, Craft will post signs and provide menus displaying the prices of items offered for sale. Such signs and menus will be subject to the reasonable approval of City. At the end of the Term, City will purchase (or will require the successor food and beverage company at the WRMC to purchase) from Craft any remaining food and beverage, and consumable goods (e.g., cups, napkins, etc.), inventory on hand at the WRMC, for the price paid by Craft for such inventory, as evidenced by written invoices or receipts. Notwithstanding the foregoing, City will not be obligated to purchase (or to have the successor food and beverage City purchase) any such inventory that is branded with the Craft name or logo, or to the extent purchase thereof would be in violation of applicable law.

Section 6.2 Quality/Menus/Brands/Prices. The brands and price of all products sold by Craft will be determined by Craft, subject to the reasonable approval of City. Provided price, quality, market acceptability, service and other terms are generally competitive, Craft agrees to give preference to and feature at the WRMC suppliers of products designated by City who purchase advertising from City (or, if applicable, an agent or licensee of City) so long as the giving of such preference does not violate applicable laws, rules or regulations and the features of such product and terms of such transaction are reasonable (as determined by Craft in its sole discretion).

Section 6.3 Equipment. Craft will have the right to use during the Term, all equipment owned or controlled by City existing within the Food and Beverage Areas as of the date hereof and/or subsequently added by City or Craft to such areas during the Term. City represents that all such equipment is in good working order, and Craft agrees to exercise reasonable care when using such equipment, so as to avoid any damage to such equipment.

Section 6.5 Utilities. City will provide to Craft all utilities necessary for Craft's operation of the Food and Beverage Services (e.g., electricity, gas and water).

Section 6.6 PCI Data Security Standards Compliance. For Payment Card Industry Data Security Standards ("PCI-DSS") compliance purposes, City will provide, on a segmented network, an appropriate number of wired data connections to the internet for Craft's Point of Sale ("POS") devices. City will be responsible for the security of its network, including, without limitation, applicable PCI-DSS compliance. To the extent provided for in the Investment, Craft will be responsible for procuring and installing POS payment systems that are compliant with the latest PCI-DSS requirements. A POS payment system may include, but is not limited to, POS terminals, payment card swipers, on-premise servers, and additional network hardware. Craft will be

responsible for the PCI-DSS compliance of its POS systems.

ARTICLE 7 MAINTENANCE

Section 7.1 Maintenance; Sanitation.

(a) Craft will perform routine servicing on all food and beverage related mechanical, electrical, and plumbing systems. Craft will perform routine servicing on all fixtures, equipment, furniture and other property installed, furnished or supplied by or for the benefit of Craft in providing Food and Beverage Services so that such items are kept in good order and repair. Craft will further make all necessary repairs thereto. Craft will maintain all equipment in a manner consistent with industry standards and will keep the equipment in good working order. Craft will provide all smallwares and dishes used on the Premises including, but not limited to, small appliances, pots, pans, utensils, serving dishes, tableware, and glassware (“Smallwares”). Craft will also provide all point-of-sale systems and related equipment for restaurant sales transactions and office and related furniture for its private office use (“Concessionaire Furnishings”). Craft will be responsible for repair, maintenance, and replacement of all Smallwares and Concessionaire Furnishings. City will provide and maintain banquet/meeting tables and chairs. The Parties shall expend the funds necessary for the repair, maintenance, and replacement of the equipment, smallwares, and furnishings on Premises as may be reasonably required over the life of the Term, with such expenses being Operating Expenses.

(b) Craft will maintain the Food and Beverage Areas in a clean and neat condition by cleaning, on a day-to-day basis, the interiors of the Food and Beverage Areas and bars, concession stands and vending stations under its control at the WRMC (and within a five (5) feet perimeter of such stands and stations). Craft will further clean, as needed, the walls, windows, ceilings, light fixtures and equipment located within the Food and Beverage Areas. Craft will deposit in receptacles provided by City all waste, garbage and refuse which will accumulate in the Food and Beverage Areas. Craft will also provide pest control services as may be necessary for the Food and Beverage Areas.

(c) Craft will comply with and observe all federal, state and local laws, ordinances and regulations as to sanitation and the purity of food and beverages or otherwise relating to its operations under this Agreement.

ARTICLE 8 LICENSES; ALCOHOLIC BEVERAGES; TAXES

Section 8.1 Permits and Licenses. Craft will use reasonable commercial efforts to secure and maintain throughout the Term all licenses and permits necessary for the operation of the Food and Beverage Services, including those required for the sale of alcoholic beverages at the WRMC. City will cooperate with Craft in connection with filing applications for, and securing and maintaining in good standing, any and all licenses and permits and renewals thereof needed by Craft to fulfill its obligations hereunder. In the event that Craft is unable to secure or maintain the necessary licenses or permits to sell alcoholic beverages at the WRMC for any reason, or if

Craft is prevented or limited from selling alcoholic beverages at the WRMC for any reason, at Craft's request the Parties will re-negotiate in good faith the economic terms of this Agreement so that the economic benefits provided to Craft hereunder are maintained. If, despite such good faith negotiations, the Parties are unable to come to agreement on the revised economic terms of this Agreement, Craft may terminate this Agreement, without liability to Craft, upon thirty (30) days written notice to City.

Section 8.2 Alcoholic Beverages. In connection with the sale of alcoholic beverages hereunder by Craft, Craft agrees to strictly comply with the laws of the State of Texas regarding the sale of such beverages to minors. Craft agrees to adopt an identification policy to verify the age of potential purchasers of alcoholic beverages. Craft further agrees that it will endeavor not to sell alcoholic beverages to customers who are visibly intoxicated. Craft will institute and conduct training programs for Craft employees at the WRMC on the proper standards to use to avoid selling alcoholic beverages to customers who are or who appear to be intoxicated.

Section 8.3 Taxes. Craft will collect and pay all taxes imposed upon the sale of concession items hereunder, as required by Federal, State or local law. Craft will be responsible for and pay all social security, unemployment insurance, retirement and other federal and state taxes that are measured by the wages, salaries, or other remuneration paid to persons employed by Craft. City will be responsible for and hold Craft harmless from any and all possessory interest or leasehold taxes which may be levied or are in effect during the Term.

ARTICLE 9 OPERATING ACCOUNT; REPORTING; CONFIDENTIALITY

Section 9.1 Establishment of Operating Account. Craft will establish and maintain, in its name, a separate commercial bank account for the WRMC ("Operating Account") and will deposit all Gross Sales in such account.

Section 9.2 Payment of Expenses. Craft will pay all Operating Expenses from the Gross Sales generated under this Agreement.

Section 9.3 Books and Records. Craft agrees to maintain separate and independent books and records, in accordance with generally accepted accounting principles, relating to its operations in connection with its management of the Food and Beverage Services, as applicable. Such books and records will contain documentation regarding the deposit of all Gross Sales in the Operating Account, and the incurrence by Craft of all Operating Expenses, including copies of invoices of all products and materials purchased by Craft hereunder, and copies of payroll summaries, deposit receipts and bank statements relating to the Operating Account. City or its designee will have the right to inspect such books and records from time to time upon reasonable notice during the ordinary business hours of Craft.

Section 9.4 Financial Reports. Craft will provide to City, within twenty (20) days following the end of each Monthly Accounting Period, financial reports regarding its provision of Food and Beverage Services during such Monthly Accounting Period, including a statement

showing Gross Sales and Operating Expenses for the applicable period. Additionally, Craft will provide to City, within twenty-four (24) hours following each event at the WRMC, a daily Gross Sales report in a form to be mutually agreed upon.

Section 9.5 Audit. Craft agrees that City will, until the expiration of three (3) years after final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of Craft involving transactions relating to this Agreement. Craft agrees that City will have access during normal working hours to all necessary Craft facilities and will be provided adequate and appropriate workspace in order to conduct audits in compliance with the provisions of this section. City will give Craft reasonable advance notice of intended audits. In the event such audit reveals any underpayment to City, Craft will promptly pay to City the amount of such deficiency. If such audit reveals any overpayment to City, City will promptly pay to Craft the amount of such overpayment. Craft further agrees to ensure this obligation is included in any subcontractor agreement such that any subcontractor performing food and beverage services on Craft's behalf agrees to be bound by the same audit obligations.

ARTICLE 10 LIABILITY AND INDEMNIFICATION

SECTION 10.1 LIABILITY. CRAFT WILL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL MISCONDUCT OF CRAFT, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.

SECTION 10.2 GENERAL INDEMNIFICATION. CRAFT HEREBY COVENANTS AND AGREES TO INDEMNIFY, HOLD HARMLESS AND DEFEND CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ANY AND ALL CLAIMS OR LAWSUITS OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, FOR EITHER PROPERTY DAMAGE OR LOSS (INCLUDING ALLEGED DAMAGE OR LOSS TO CRAFT'S BUSINESS AND ANY RESULTING LOST PROFITS) AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OR MALFEASANCE OF CRAFT, ITS OFFICERS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.

SECTION 10.3 LIABILITY. CITY WILL BE LIABLE AND RESPONSIBLE FOR ANY AND ALL PROPERTY LOSS, PROPERTY DAMAGE AND/OR PERSONAL INJURY, INCLUDING DEATH, TO ANY AND ALL PERSONS, OF ANY KIND OR CHARACTER, WHETHER REAL OR ASSERTED, TO THE EXTENT CAUSED BY THE NEGLIGENT ACT(S) OR OMISSION(S), MALFEASANCE OR INTENTIONAL

MISCONDUCT OF CITY, ITS OFFICERS, ELECTED OFFICIALS, AGENTS, SERVANTS, EMPLOYEES, CONTRACTORS, OR SUBCONTRACTORS.

Section 10.4 Survival. The obligations of the Parties contained in this Article 10 will survive the termination or expiration of this Agreement and continue on indefinitely.

**ARTICLE 11
INSURANCE**

Section 11.1 Types and Amount of Coverage - Craft. Craft agrees to secure and maintain throughout the Term insurance coverage in the manner and amounts as set forth in Schedule I, attached hereto, and will provide to City promptly following the Effective Date a certificate or certificates of insurance evidencing such coverage.

Section 11.2 Types and Amount of Coverage - City. The City is a governmental entity under the laws of the state of Texas and pursuant to Chapter 2259 of the Texas Government Code, entitled “Self-Insurance by Governmental Units,” is self-insured and therefore is not required to purchase insurance. City will provide a letter of self-insured status as requested by Craft.

Section 11.3 Rating and Additional Insureds. All insurance policies will be issued by companies rated no less than A VIII in the most recent “Bests” insurance guide, and licensed in the State of Texas, and will be in such form and contain such provisions as are generally considered standard for the type of insurance involved. City, and its officers, elected officials and employees (“City Additional Insureds”) will be named as additional insureds under the commercial general liability policy and the commercial automobile liability policy to be obtained by Craft.

**ARTICLE 12
DISCLOSURE OF CONFLICTS AND CONFIDENTIAL INFORMATION**

Section 12.1 Disclosure of Conflicts. Craft hereby warrants to City that Craft has made full disclosure in writing of any existing or potential conflicts of interest related to Craft’s services under this Agreement. In the event that any conflicts of interest arise after the Effective Date of this Agreement, Craft hereby agrees immediately to make full disclosure to City in writing.

Section 12.2 Confidential Information. Craft, for itself and its officers, agents and employees, agrees that it will treat all information provided to it by City (“City Information”) as confidential and will not disclose any such information to a third party without the prior written approval of City.

Section 12.3 Public Information Act. City is a government entity under the laws of the State of Texas and all documents held or maintained by City are subject to disclosure under the Texas Public Information Act. In the event there is a request for information marked Confidential or Proprietary, City will promptly notify Craft. It will be the responsibility of Craft to submit reasons objecting to disclosure. A determination on whether such reasons are sufficient will not be decided by City, but by the Office of the Attorney General of the State of Texas or by a court of

competent jurisdiction.

Section 12.4 Unauthorized Access. Craft must store and maintain City Information in a secure manner and will not allow unauthorized users to access, modify, delete or otherwise corrupt City Information in any way. Craft must notify City immediately if the security or integrity of any City Information has been compromised or is believed to have been compromised, in which event, Craft will, in good faith, use all commercially reasonable efforts to cooperate with City in identifying what information has been accessed by unauthorized means and will fully cooperate with City to protect such City Information from further unauthorized disclosure.

ARTICLE 13 MISCELLANEOUS

Section 13.1 Authorization.

(a) Craft represents and warrants that it has the full right and legal authority to enter into this Agreement and to grant the rights and perform the obligations of Craft herein, and that, except as otherwise set forth herein, no third party consent or approval is required to grant such rights or perform such obligations hereunder.

(b) City represents and warrants that it is the authorized operator of the WRMC, and that it has the full right and legal authority to enter into this Agreement and to grant the rights and perform the obligations of City herein, and that no other third party consent or approval is required to grant such rights or perform such obligations hereunder.

Section 13.2 Force Majeure. City and Craft will exercise all commercially reasonable efforts to meet their respective duties and obligations as set forth in this Agreement, but will not be held liable for any delay or omission in performance due to force majeure or other causes beyond their reasonable control, including, but not limited to, compliance with any government law, ordinance, or regulation; acts of God; acts of the public enemy; fires; strikes; lockouts; natural disasters; wars; riots; epidemics or pandemics; government action or inaction; orders of government; material or labor restrictions by any governmental authority; transportation problems; restraints or prohibitions by any court, board, department, commission, or agency of the United States or of any States; civil disturbances; other national or regional emergencies; or any other similar cause not enumerated herein but which is beyond the reasonable control of the Party whose performance is affected (collectively, "Force Majeure Event"). The performance of any such obligation is suspended during the period of, and only to the extent of, such prevention or hindrance, provided the affected Party provides notice of the Force Majeure Event, and an explanation as to how it prevents or hinders the Party's performance, as soon as reasonably possible after the occurrence of the Force Majeure Event. The notice required by this section must be addressed and delivered in accordance with Section 13.4 of this Agreement.

Section 13.3 Assignment. Neither Party may assign this Agreement without the prior written consent of the other, which consent will not be unreasonably withheld or delayed; however, Craft or City may, without the prior written consent of the other, assign this Agreement and/or its rights and obligations hereunder (i) to any person or entity who succeeds (whether by merger,

consolidation or sale of assets or equity or the like) to all or substantially all of the business and properties of such Party, or (ii) in connection with a corporate restructuring, to any person who is an owner, parent, subsidiary or affiliate of such Party, and who carries on the business of such Party in substantially the same manner. Any assignee of Craft or City pursuant to the preceding sentence must agree in writing to assume the assignor's obligations hereunder in order for such assignment to become effective. This Agreement is binding on the Parties' successors and permitted assigns.

Section 13.4 Notices. Notices required pursuant to the provisions of this Agreement will be conclusively determined to have been delivered when: (1) hand-delivered to the other Party, its agents, employees, servants or representatives; (2) delivered by facsimile with electronic confirmation of the transmission; or (3) received by the other Party by United States Mail, registered, return receipt requested, addressed as follows:

<p>To CITY:</p> <p>City of Fort Worth Attn: Assistant City Manager 200 Texas Street Fort Worth, TX 76102-6314 Facsimile: (817) 392-8654</p> <p>With copy to Fort Worth City Attorney's Office at same address</p>	<p>To CRAFT:</p> <p>Craft Culinary Concepts LLC Attn: President and General Counsel 1 Cardinals Drive Glendale, AZ 85305</p> <p>With a copy to: Spencer Fane, LLP Attn: James S. Patterson 5700 Granite Parkway, Suite 650 Plano, TX 75024 jpatterson@spencerfane.com</p>
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The designation of the individuals to be so notified and the addresses of such Parties set forth above may be changed from time to time by written notice to the other Party in the manner set forth above.

Section 13.5 Severability. If a court of competent jurisdiction determines that any term of this Agreement is invalid or unenforceable to any extent under applicable law, the remainder of this Agreement (and the application of this Agreement to other circumstances) will not be affected thereby, and each remaining term will be valid and enforceable to the fullest extent permitted by law.

Section 13.6 Prior Agreements. This Agreement (including the schedule(s) attached hereto) constitutes the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous negotiations, correspondence, conversations, agreements, and understandings concerning the subject matter hereof. Accordingly, the Parties agree that no deviation from the terms hereof will be predicated upon any prior representations, agreements or understandings, whether oral or written.

Section 13.7 Governing Law and Venue. This Agreement and the rights and obligations of the Parties hereto will be governed by, and construed in accordance with the laws of the United States and State of Texas, exclusive of conflicts of laws provisions. Venue for any suit brought under this Agreement will be in a court of competent jurisdiction in state court in Tarrant County, Texas or the United States District Court for the Northern District of Texas – Fort Worth Division.

Section 13.8 Amendments. Neither this Agreement nor any of its terms may be changed or modified, waived, or terminated (unless as otherwise provided hereunder) except by an instrument in writing signed by an authorized representative of the Party against whom the enforcement of the change, waiver, or termination is sought.

Section 13.9 Waiver; Remedies. No failure or delay by a Party hereto to insist on the strict performance of any term of this Agreement, or to exercise any right or remedy consequent to a breach thereof, will constitute a waiver of any breach or any subsequent breach of such term. No waiver of any breach hereunder will affect or alter the remaining terms of this Agreement, but each and every term of this Agreement will continue in full force and effect with respect to any other then existing or subsequent breach thereof. The remedies provided in this Agreement are cumulative and not exclusive of the remedies provided by law or in equity.

Section 13.10 Relationship of Parties. Craft is engaged by City hereunder as an independent contractor to perform the services described herein, and nothing contained in this Agreement will be deemed to create, whether express or implied, a partnership, joint venture, employment, joint employer, or agency relationship between City and Craft, except as otherwise expressly set forth in this Agreement.

Section 13.11 Network Access.

(a) {Intentionally Blank}

(b) Federal Law Enforcement Database Access. If Craft, or any Craft Personnel, requires access to any federal law enforcement database or any federal criminal history record information system, including but not limited to Fingerprint Identification Records System (“FIRS”), Interstate Identification Index System (“III System”), National Crime Information Center (“NCIC”) or National Fingerprint File (“NFF”), or Texas Law Enforcement Telecommunications Systems (“TLETS”), that is governed by and/or defined in Title 28, Code of Federal Regulations Part 20 (“CFR Part 20”), for the purpose of providing services for the administration of criminal justice as defined therein on behalf of City or the Fort Worth Police Department, under this Agreement, Craft will comply with the Criminal Justice Information Services Security Policy and CFR Part 20, as amended, and will separately execute the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum. No changes, modifications, alterations, or amendments will be made to the Security Addendum. The document must be executed as is, and as approved by the Texas Department of Public Safety and the United States Attorney General.

Section 13.12 Immigration Nationality Act. Craft will verify the identity and employment eligibility of its employees who perform work under this Agreement, including completing the

Employment Eligibility Verification Form (I-9). Upon request by City, Craft will provide City with copies of all I-9 forms and supporting eligibility documentation for each employee who performs work under this Agreement. Craft will adhere to all Federal and State laws as well as establish appropriate procedures and controls so that no services will be performed by any Craft employee who is not legally eligible to perform such services. **CRAFT WILL INDEMNIFY CITY AND HOLD CITY HARMLESS FROM ANY PENALTIES, LIABILITIES, OR LOSSES DUE TO VIOLATIONS OF THIS PARAGRAPH BY CRAFT, CRAFT'S EMPLOYEES, SUBCONTRACTORS, AGENTS, OR LICENSEES.** City, upon written notice to Craft, will have the right to immediately terminate this Agreement for violations of this provision by Craft.

Section 13.13 No Boycott of Israel. If Craft has fewer than 10 employees or this Agreement is for less than \$100,000, this section does not apply. Craft acknowledges that in accordance with Chapter 2270 of the Texas Government Code, City is prohibited from entering into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The terms "boycott Israel" and "company" will have the meanings ascribed to those terms in Section 808.001 of the Texas Government Code. By signing this Agreement, Craft certifies that Craft's signature provides written verification to City that Craft: (1) does not boycott Israel; and (2) will not boycott Israel during the term of this Agreement.

Section 13.14 Prohibition on Boycotting Energy Companies. Craft acknowledges that in accordance with Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2, City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of the contract. The terms "boycott energy company" and "company" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 13, § 2. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Craft certifies that Contractor's signature provides written verification to City that Contractor: (1) does not boycott energy companies; and (2) will not boycott energy companies during the term of this Agreement.

Section 13.15 Prohibition on Discrimination Against Firearm and Ammunition Industries. Craft acknowledges that except as otherwise provided by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1, City is prohibited from entering into a contract for goods or services that has a value of \$100,000 or more that is to be paid wholly or partly from public funds of City with a company with 10 or more full-time employees unless the contract contains a written verification from the company that it: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate during the term of the contract against a firearm entity or firearm trade association. The terms "discriminate," "firearm entity" and "firearm trade association" have the meaning ascribed to those terms by Chapter 2274 of the Texas Government Code, as added by Acts 2021, 87th Leg., R.S., S.B. 19, § 1. To the extent that Chapter 2274 of the Government Code is applicable to this Agreement, by signing this Agreement, Craft certifies that

Contractor's signature provides written verification to City that Contractor: (1) does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (2) will not discriminate against a firearm entity or firearm trade association during the term of this Agreement.

Section 13.16 Governmental Powers. It is understood and agreed that by execution of this Agreement, City does not waive or surrender any of its governmental powers or immunities.

Section 13.17 Non-Discrimination Covenant. Craft, for itself, its personal representatives, assigns, contractors, subcontractors, and successors in interest, as part of the consideration herein, agrees that in the performance of Craft's duties and obligations hereunder, it will not discriminate in the treatment or employment of any individual or group of individuals on any basis prohibited by law. **IF ANY CLAIM ARISES FROM AN ALLEGED VIOLATION OF THIS NON-DISCRIMINATION COVENANT BY CRAFT, ITS PERSONAL REPRESENTATIVES, ASSIGNS, CONTRACTORS, SUBCONTRACTORS, OR SUCCESSORS IN INTEREST, CRAFT AGREES TO ASSUME SUCH LIABILITY AND TO INDEMNIFY AND DEFEND CITY AND HOLD CITY HARMLESS FROM SUCH CLAIM.**

Section 13.18 Compliance with Laws, Ordinances, Rules and Regulations. Craft agrees that in the performance of its obligations hereunder, it will comply with all applicable federal, state and local laws, ordinances, rules and regulations and that any work it produces in connection with this Agreement will also comply with all applicable federal, state and local laws, ordinances, rules and regulations. If City notifies Craft of any violation of such laws, ordinances, rules or regulations, Craft must immediately desist from and correct the violation.

Section 13.19 Counterparts; Faxed or Emailed Signatures. This Agreement may be executed in counterparts, each of which will constitute an original, and all of which together will constitute one and the same document. This Agreement may be executed by electronic signature, which will be considered as an original signature for all purposes and have the same force and effect as an original signature. For these purposes, "electronic signature" means electronically scanned and transmitted versions (e.g. via pdf file or facsimile transmission) of an original signature, or signatures electronically inserted via software such as Adobe Sign.

Section 13.20 Business Equity Firm Amendment. City and Craft agree that, at a mutually agreed upon date and upon City Council authorization, this Agreement will be amended to address Business Equity Firm ("BEF") goals for subcontracts related to the Food and Beverages Services provided by Craft pursuant to this Agreement. BEF has the meaning assigned to it in City's Business Equity Ordinance (Chapter 20, Article X of the Fort Worth City Code), as amended.

IN WITNESS WHEREOF, each Party hereto has caused this Food and Beverage Agreement to be executed on behalf of such Party by an authorized representative as of the date first set forth above.

[Executed effective as of the date signed by the Assistant City Manager below.] [ACCEPTED AND AGREED:]

City: By: <u></u> <small>Reginald Zeno (Aug 10, 2022 16:49 CDT)</small> Name: Reginald Zeno Title: Acting Assistant City Manager Date: _____	Craft Culinary Concepts LLC: By: <u></u> <small>Timothy Bidwill (Aug 1, 2022 08:20 PDT)</small> Name: Timothy Bidwill Title: Vice President Date: _____
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CITY OF FORT WORTH INTERNAL ROUTING PROCESS:

Approval Recommended: By: <u></u> <small>Michael E Crum (Aug 10, 2022 16:22 CDT)</small> Name: Michael Crum Title: Director, Public Events Approved as to Form and Legality: By: <u></u> Name: Taylor C. Paris Title: Assistant City Attorney Contract Authorization: M&C: M&C 22-0031 (January 11, 2022)	Contract Compliance Manager: By signing I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements. By: <u></u> Name: Kevin Kemp Title: Assistant Public Events Director _____ City Secretary: By: <u></u> <small>Jannette S. Goodall (Aug 10, 2022 16:57 CDT)</small> Name: Jannette S. Goodall Title: City Secretary
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**OFFICIAL RECORD
CITY SECRETARY
FT. WORTH, TX**

Exhibit "A"

{Intentionally Blank}

SCHEDULE I INSURANCE

At all times during the Term of this Agreement, Craft will maintain the following coverages, in the amounts set forth below. Craft must provide City with certificate(s) of insurance documenting policies of the following types and minimum coverage limits that are to be in effect prior to commencement of any services pursuant to this Agreement:

Coverage and Limits

1. Commercial General Liability:
 - a. \$1,000,000 - Each Occurrence
 - b. \$2,000,000 - Aggregate

2. Automobile Liability:
 - a. \$1,000,000 - Each occurrence on a combined single limit basis

Coverage will be on any vehicle used by Craft, or its employees, agents, or representatives in the course of providing Services under this Agreement. "Any vehicle" will be any vehicle owned, hired and non-owned.

3. Worker's Compensation:

Statutory limits according to the Texas Workers' Compensation Act or any other state workers' compensation laws where the Services are being performed

4. Employers' liability

\$100,000 - Bodily Injury by accident; each accident/occurrence

\$100,000 - Bodily Injury by disease; each employee

\$500,000 - Bodily Injury by disease; policy limit

5. Fidelity. Craft will maintain coverage in the form of insurance or bond in the amount of \$875,000.00 to insure against loss from the fraud, theft, or dishonesty of any of Craft's officers, agents, trustees, directors, employees, or volunteers related to the Repair Funds. The proceeds of such insurance or bond shall be used to reimburse City for any and all loss of funds associated with the Repair Fund account, as described by this Agreement, occasion by such misconduct. To effectuate such reimbursement, such fidelity coverage must include a rider stating that reimbursement for any loss or loss will name City as a Loss Payee. If, at any time during the term of this Agreement, the Repair Funds exceeds \$875,000.00, then Craft will contact City's Risk Manager. The City's Risk Manager will have the right to review and evaluate the insurance or bond coverage and suggest revisions in coverage in accordance with this Agreement.

General Requirements

- a. The commercial general liability and automobile liability policies must name City or Craft, as applicable, as an additional insured thereon, as its interests may appear. The term City includes its employees, officers, elected officials, agents, and volunteers in respect to the contracted services. The term Craft includes its managers, officers, employees and agents in respect to the contracted services.
- b. The workers' compensation policy must include a Waiver of Subrogation (Right of Recovery) in favor of City or Craft, as applicable.
- c. A minimum of Thirty (30) days' notice of cancellation or reduction in limits of coverage must be provided to City. Ten (10) days' notice will be acceptable in the event of non-payment of premium. For Notices to City, notice must be sent to the Risk Manager, City of Fort Worth, 200 Texas Street, Fort Worth, Texas 76102, with copies to the Fort Worth City Attorney at the same address. For Notices to Craft, notice must be sent to Craft Culinary Concepts, LLC, Attn: President and General Counsel, 1 Cardinals Drive, Glendale, AZ 85305.
- d. The insurers for all policies must be licensed and/or approved to do business in the State of Texas. All insurers must have a minimum rating of A- VII in the current A.M. Best Key Rating Guide, or have reasonably equivalent financial strength and solvency to the satisfaction of Risk Management. If the rating is below that required, written approval of Risk Management is required.
- e. Any failure on the part of City to request required insurance documentation will not constitute a waiver of the insurance requirement.
- f. Certificates of Insurance evidencing that Craft has obtained all required insurance will be delivered to City prior to Craft proceeding with any work pursuant to this Agreement.
- g. The City's Risk Manager will have the right to review and evaluate all required insurance coverage and to make reasonable requests or revisions pertaining to the types and limits of that coverage. Craft and any subcontractors will comply with such requests or revisions as a condition precedent to the effectiveness of this Agreement.
- h. Craft's insurance policies will each be endorsed to provide that such insurance is primary protection and that any self-funded or commercial coverage maintained by City will not be called upon to contribute to loss recovery.

CITY COUNCIL AGENDA



Create New From This M&C

DATE:	1/11/2022	REFERENCE M&C 22- NO.:	0031	LOG NAME:	25WRMC FOOD & BEVERAGE AGREEMENT WITH CRAFT CULINARY
CODE:	C	TYPE:	NON- CONSENT	PUBLIC HEARING:	NO
SUBJECT:	(CD 7) Authorize Execution of a Contract with Craft Culinary Concepts, LLC to Provide Food and Beverage Services at the Will Rogers Memorial Center for an Initial Term of 10 Year, with Five Optional One-Year Renewal Terms and a Management Fee in an Amount Equal to 2.75 of Annual Gross Sales				

RECOMMENDATION:

It is recommended that the City Council authorize the execution of a contract with Craft Culinary Concepts, LLC, to provide Food and Beverage Services at the Will Rogers Memorial Center for a term of 10 years, beginning on January 13, 2022 and expiring on January 12, 2032, with five optional one-year renewal terms, and a management fee in an amount equal to 2.75% of annual gross sales.

DISCUSSION:

The purpose of this Mayor and Council Communication is to consider a Food and Beverages Services Agreement with Craft Culinary Concepts, LLC (Agreement). The current agreement with Coburn's Catering Service, Inc. (Coburn's) to provide Concession and Alcoholic Beverage Services at Will Rogers Memorial Center (WRMC) expires on January 13, 2022.

The Public Events Department (PED) began the process of selecting a future provider of Food and Beverage Services at WRMC in the first quarter of 2021. The City contracted with Hunden Strategic Partners (HSP) as an advisor and to manage the selection process on the City's behalf.

In April of 2021, a Request for Qualifications (RFQ) was issued for WRMC Food and Beverage Provider Services. Six companies responded to the RFQ (2 local, 1 regional, 3 national). The responses of 5 of the companies were determined to be compliant with the requirements of the RFQ.

In June of 2021, a Request for Proposals (RFP) was issued to the five short-listed companies. All five of the companies responded to the RFP.

In August of 2021, the five respondents were interviewed. HSP then followed up on each proposal with additional questions and clarifications.

Respondent's proposals were evaluated on the following criteria:

Financial Proposal:	37%
Business Equity Participation:	15%
Revenue Improvement Record:	12%
Demonstrated Innovation:	12%
Fort Worth Flavor:	12%
Quality of Experience:	12%

Based on the evaluation of the interview panel, Craft Culinary Concepts, LLC (Craft) was selected as the leading candidate to serve as the provider of Food and Beverage Services at WRMC.

In November of 2021, staff briefed the Fort Worth City Council about the interview panel's recommendation and Craft's proposal.

Below are the essential terms of the proposed Agreement:

Term: The Agreement will be binding upon execution by the parties and will be effective for a term of ten (10) years, beginning on January 13, 2022, and include five optional one-year renewal terms. Craft will start operations in February after the end of the 2022 Fort Worth Stock Show and Rodeo.

Financial Structure

Craft will invest at least \$750,000.00 in mutually agreed upon new food and beverage focused capital investments within the first 18 months of the effective date of the Agreement. This investment will be amortized in equal monthly amounts over a period of seven years from the date that the City accepts the improvements. Craft has also committed to investing in, and operating a, 53-foot grill and smoker tractor-trailer (valued at \$1.3M), which will be used to serve customers at the WRMC and for various events throughout the City. Craft will pay the City 2.5\% of its annual gross sales for repairs, maintenance, and replacement of items at the WRMC related to the services to be provided under the Agreement. All such funds will be placed in a specially designated repair, maintenance, and replacement fund for the WRMC. City will pay Craft an annual management fee equal to 2.75\% of gross sales, which will be specifically defined in the Agreement. Craft will pay the City 90\% of its annual operating profits that it receives from the services to be provided under the Agreement.

Services

Craft will be responsible for providing professional food and beverage and other limited support services for WRMC events and visitors using the existing facilities, coupled with the new investment in them and new equipment. Craft's services will generally include the purchase, preparation, sales, marketing, and service of food, alcoholic and non-alcoholic beverages, and other related food items for WRMC catered and non-catered events. Catering, concessions, and alcohol are exclusives, and the Craft will carry the alcohol permit. The services will also include the operation of permanent concessions stands, portable food and beverage outlets, and permanent food service outlets. Catering services at the WRMC will be provided through a "Catering Cooperative Program" (Program). The Program will present the catering products and services of Craft, as well as the products and services of local caterers (selected by a panel representing local WRMC constituent organizations) who represent genres of "Fort Worth Flavor". The goal of the Program is to provide an elevated level of catering products and services at the WRMC that represent Fort Worth cuisine and provide opportunities to local catering firms (including Business Equity Firms), with the ultimate goal of increasing the volume of catering events and revenue and improving customer experience for the WRMC.

Local and Business Equity Firms: Craft has also committed to a 33\% Business Equity participation goal that places and emphasis on doing business with Fort Worth-based companies and Business Equity Firm (BEF).

FISCAL INFORMATION/CERTIFICATION:

The Director of Finance certifies that upon approval of the above recommendation and execution of the contract, funds will be deposited into the Culture & Tourism Fund. The Public Events Department (and Financial Management Services) is responsible for the collection and deposit of funds due to the City.

TO

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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FROM

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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Submitted for City Manager's Office by: Jay Chapa (5804)

Originating Department Head:

Michael Crum (2501)

Additional Information Contact:

Kevin Kemp (5982)

ATTACHMENTS

[Craft Culinary Form 1295.pdf](#) (CFW Internal)