City of Pendleton

Contract No. \_\_\_\_\_\_\_\_\_

**PENDLETON CONVENTION CENTER**

**Food and Beverage Concession and Catering Services Contract**

This Agreement, made this \_\_\_\_day of July, 2021, by and between the City of Pendleton, an Oregon municipal corporation, acting through its designee, the Pendleton Convention Center, hereinafter referred to as “City,” and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [Caterer/Contractor], an \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [entity type], hereinafter referred to as “Contractor.”

**WITNESSETH:**

Whereas, the City desires to have provided quality food and beverage service through concessions operations at the Pendleton Convention Center, which is owned and operated by the City of Pendleton;

Whereas, Contractor is willing and able to provide such food and beverage services including the sale of alcoholic beverages;

Now, therefore, in consideration of the mutual covenants and agreements hereinafter set forth, to be kept and performed by the parties, it is agreed by and between the City and Contractor as follows:

**Section 1. DATE.** The date of this contract shall be August 1, 2021.

**Section 2. DEFINITIONS.**

A. As used in this contract, the following terms and words are hereby defined as follows:

CITY. Shall mean the City of Pendleton Oregon, a municipal corporation and includes Convention Center Department.

CONTRACTOR. Shall mean the Catering Company that is entering into this agreement with the City.

CUSTOMER. Consumer of food, alcohol, and/or services provided by Caterer pursuant to contract with Caterer.

EVENT. Conference, convention, meeting, training, trade show, athletic contest, contest, or group or contracted use the of PCC facilities.

GROSS REVENUES. Shall mean the aggregate amount of all food, beverage, alcohol and concession sales and services rendered by the Contractor.

GROUP. Attendees of an event.

OFF-SITE SALE. Catering of food and/or alcohol when prepared in the PCC kitchen and served off of the PCC premises.

PCC. The Pendleton Convention Center, located at 1601 Westgate, Pendleton, Oregon.

REVENUE. All monies received in compensation for services and products, including gratuities, provided by Contractor

**Section 3. CITY CONTRACT REPRESENTATIVES.**

A. The PCC Manager shall be responsible for monitoring the performance of the Contractor, the approval of actions by the Contractor, approval for payment of billings from the Contractor, and the acceptance of any reports by the Contractor.

B. The Contractor’s representative for this Contract shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ who will be the contact person for all communications regarding the conduct of work under this Contract. All communications given or received by hand delivery or posted mail from the Contractor’s representative shall be binding on the Contractor.

C. Contractor’s representative shall ensure supervision and coordination of Contractor’s work under this Contract and shall take corrective action as necessary to meet the requirement of this Contract. Contractor’s representative, or designee, shall be available at all times during normal working hours throughout the term of the Contract. Written notices of deficiency which result in termination of the Contract will be sent to the Contractor’s listed address.

D. Contact Information for the parties:

**City of Pendleton:** Convention Center

Pat Beard, Manager

1601 Westgate

Pendleton OR 97801

541-276-6569

**Contractor: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Section 4. TERM.**

The period of performance under this Contract will begin on August 1, 2021 and will continue through a term of three (3) years, terminating July 31, 2024, with three (3), three-year extension options.

**Section 5. RENEWAL.**

By mutual agreement of the parties the contract may be renewed upon the same terms and condition for additional terms. At the termination of any term, the CONTRACT may be extended by the City for a period not to exceed two months, if necessary, if in the sole judgment of the City to it is necessary to facilitate the process of securing competitive proposals on a replacement Contract. The City shall extend the Contract by providing the Contractor with written notice of the extension at least sixty days before the termination date.

**Section 6. SCOPE OF WORK.**

A. CONTRACT RESPONSIBILITIES.

1. Catering Services. Contractor will provide public food and beverage catering services, which shall include all aspects of the purchase, preparation and service of all concession sales, catering, beverage and alcoholic beverage services in the PCC for PCC and other specific events. Contractor will be responsible for such work, and shall include operation of concession stands, bars, portable food services and off-site catering (when the PCC kitchen is used) for such outside catering and for such other activities. Contractor will provide necessary personnel, equipment, materials, tools, suppliers and concession services for PCC events and visitors, using the kitchen, concessions and portable equipment.

2. Reporting and Accounting. Contractor shall accurately conduct, monitor, report and account for sales to PCC as required.

3. Marketing. The Contractor will actively endeavor to secure contracts and new events in cooperation with PCC’s marketing activities. Contractor will join in sales presentations when requested by the PCC Manager, provide samples at no cost upon request of PCC, and join PCC at tradeshows and assist in marketing efforts and activities. Contractor shall include a viable website, a Facebook page, Instagram account that is updated and posted to no less than monthly, weekly is preferred. Radio and print advertising are encouraged to promote the Contractor’s business to the community for off-site catering services. Contractor is expected to make a real and ongoing attempt to build strong business connections within the community for both practical and social reasons.

4. Contractor will purchase products and services locally when practical.

5. Contractor shall, when feasible, create menus for meals and breakout sessions which feature locally produced ingredients to highlight “Pendleton” and regionally grown or made products.

B. QUALITY OF GOODS AND SERVICES. Contractor shall provide products and services of high quality and at prices at least consistent with similar products presently being offered in other similar facilities located in the North Western United States. The PCC Manager may, at any time an in its discretion, determine that a specific food product or service fails to comply with the above standard. Upon notification of substandard determination, Contractor will adequately address the deficiency.

C. USE OF FACILITIES. Contractor shall use PCC facilities for preparation of catering products to be consumed both at PCC and Off-Site locations, as further provided in the Compensation and Payment Sections, and additional references of this contract.

D. PRICING. The Contractor shall set the prices for the food and beverage concessions and catering services, including all menu items and prices for all permanent and portable stands offered by Contractor subject to the approval of the PCC Manager. The Contractor shall maintain a current and accurate menu online on the Contractor’s web page and will furnish updated menus to the City for the PCC web page. All menu pricing increases must be approved by the PCC Manager prior to implementation.

E. SPECIAL MENUS. Contractor will create special menus and/or enable staff to provide special food and beverage service or items when requested by a customer.

F. APPROVAL OF SALES. Contractor will solicit and obtain approval of PCC Manager for all sales events, which approval shall not be unreasonably withheld so long as such sales are commercially profitable for the PCC and Contractor and are not in conflict with other events or clients, of all sales events. Contractor will coordinate with PCC and the clients in determining number of concession stands, bars and/or portable concession outlets open for each event.

G. LINENS AND DÉCOR. Contractor shall supply, at its own expense, all linens and decor items necessary for food service functions. (The cost of standard table linen and napkins shall be calculated into the menu pricing.) Contractor may provide, as part of their invoice submission, the charge for all non-standard linen. Contractor shall provide as part of their invoice to City submission the charge for all non-standard linen.

H. PROFESSIONAL EDUCATION AND TRAINING. The Contractor shall attend at least One trade show or training session in professional food preparation each year to be current with new trends and practices in the industry.

I. DISPUTE RESOLUTION. Contractor will use its best efforts to cooperate and comply with the instructions of the City’s representative, which shall be the Manager of the Pendleton Convention Center or his/her designee, with respect to the daily operations of the Food and Beverage activities of the Center. In the event of a disagreement or dispute between the Contractor and the City’s representative, the matter will be presented to the City Manager for resolution. The City Manager’s conclusions related to such disagreements or disputes shall be final.

J. ESTABLISHED BUSINESS. Contractor must, prior to commencing performance, or prior to that time if required by law or regulation, be an established business firm with all required licenses, bonding, facilities, equipment and trained personnel necessary to perform the work as specified in the bid solicitation. Contractor must have a Federal Tax Identifier Number as required by IRS regulations and a Business Identification Number required by the State of Oregon, and shall furnish both to the City within 30 days of signing the contract. Contractor must have a City of Pendleton business license, and become a member of the Pendleton Chamber of Commerce.

K. NO PARTNERSHIP. All contracts entered into by Contractor in connection with its work under this Contract will be entered into on behalf of the Contractor and not the City or the PCC.

L. SUPPLEMENTAL SPECIFIC REQUIREMENTS OF CONTRACT PERFORMANCE. Specific provisions of contract performance are detailed in Sections 9-12 of this Contract.

**Section 7. COMPENSATION AND PAYMENT.**

A. GROSS REVENUE. Contractor agrees to pay the City rent for the kitchen, and gas and electric usage, in the form of commission based on gross revenues. As used herein “Gross Revenues” shall mean the aggregate amount of all food, beverage, alcohol and concession sales and services rendered by the Contractor.

B. MONTHLY REPORTING. The Monthly Report of Gross Income, including the calculation of percentage owed to the City, shall be submitted to the PCC Manager, or his designee, no later than the 10th of each month. The monthly report shall consist of all in-house Food Sales itemized by event and date totals, all Alcohol sales and all Off-Sites. Upon approval by the PCC Manager, PCC shall enter the total approved amount into the City’s financial billing system and issue a billing invoice to the Contractor less the proper percentage.

C. CALCULATION OF GROSS REVENUE.

(1) **From Food sales**: Contractor will pay the City Fifteen percent (15%) of all gross food sales including all services and fees and gratuity, but not including liquor sales or off-site sales.

There will be an accounting of these sales by PCC, and the City will pay the contractor for all sales less 15% commission .

(2**) From Liquor sales**: Contractor will pay the City Ten percent (10%) of all gross revenues from the sale of liquor. Gross total liquor sales are not to be included in gross annual food sales total. Liquor sales, including no-host bar sales, will be accounted for separately from food reporting, and the city will pay the contractor for these sales less 10% commission.

(3) **From Off-Site Catering**: Contractor will pay the City five percent (5%) of all gross revenues, which will include gratuity, delivery and other service charges, from Off-Site Catering. Gross total Off-Site sales are not to be included in gross annual food sales total. Off-site Catering will be accounted for separately from food reporting, and the City will pay the contractor for these sales less 5% commission.

(4) From **Gratuity or Service charges:** Gratuity and service charges may not exceed 20% of the total fee for catering. The Contractor shall include in its billing a maximum of Twenty percent (20%) Gratuity and Service Charge on all internal catered food events.

D. SALES REPORTING.

(1) Contractor will submit to the PCC Manager or his designee an itemized invoice with separate accounting for food and liquor three (3) working days after the conclusion of each catering or concession event.

(2) Contractor will submit the PCC Event Sales Report for both Off-Site catered events and all liquor sales with separate reporting of alcohol sales, to the PCC Office Manager within three (3) working days after the conclusion of each catering or concession event.

**Section 8. ACCOUNTING RECORDS, REPORTS AND CUSTOMER BILLING**.

A. ACCOUNTING RECORDS AND REPORTING. For all of Contractor’s sales events the following reporting is required:

(1) Event Invoice. For all PCC events and other Contractor’s sales events, the Contractor will furnish an event invoice to the PCC Manager or his designee within three (3) working days following the conclusion of all events where food is served or offered for sale. The City will bill the client from the event invoice and the City will advance to Contractor the compensation for the invoiced event amount less commission within ten (10) working days of receipt of the Contractor’s invoice.

(2) Gratuity and Service Charges shall be included in the Gross Sales amount reported.

B. ACCOUNTING METHODS. For accounting purposes, Contractor hereby agrees to use a fiscal year basis of (July 1 – June 30). The Contractor shall maintain such accounting records as may be approved or required by the City, and Contractor shall use generally accepted accounting practices. Said records and procedures shall be sufficient to clearly reflect all revenues of any nature received in the performance of this Contract.

C. UNCOLLECTIBLE ACCOUNTS. Contractor shall bear no responsibility for bad debts for events that are catered within PCC.

D. RECORD RETENTION. Contractor shall retain all records relating to this Contract for a period of six years following the date of final payment or completion of any required audit, whichever is earlier. The City, the City’s Auditor, and authorized government agency officials shall have the right upon reasonable notice to inspect, review and audit all books, correspondence, memoranda, or other records of the Contractor, relating to this agreement, during the period of the contract, and such time thereafter as may be necessary to accomplish such verification. The City reserves the right to use whatever methods necessary to verify the accuracy of the Contractor’s sales reports.

E. REVIEW OF CONTRACTOR’S RECORDS. Contractor shall maintain books, records, documents and other evidence of accounting procedures and practices, which sufficiently and properly reflect all transactions undertaken in the performance of this contract. These records shall be subject to inspection, review, or audit upon 24 hours’ notice to Contractor. The Contractor will retain all books, records, documents, and other materials relevant to this Contract for six years after settlement and make them available for inspection by persons authorized under this provision.

**Section 9. USE OF KITCHEN AND EQUIPMENT/EXCLUSIVE RIGHTS OF CONTRACTOR**.

1. EXCLUSIVE USE OF KITCHEN. Subject to the exceptions listed below, Contractor shall have the sole and exclusive right to use the kitchen, kitchen storage areas, liquor bars, liquor storage areas, concession stand and concession service areas.

B. OTHER USERS. The following civic and non-profit organizations will have use of kitchen areas and equipment during the following specific events or time periods. Contractor will not be responsible for any damage to the Center catering facilities which are caused by or attributable to such other users. These are:

1. Happy Canyon shall be entitled to exclusive possession of the PCC premises during the following time period:

a. beginning seven (7) days prior to the first day of Pendleton Round-Up and continuing until three (3) days after the last day of the Pendleton Round-Up; and

b. two (2) days of exclusive possession during a time that is mutually agreeable to PCC and Happy Canyon.

c. three (3) days of partial use of PCC.

Happy Canyon shall not be required to pay kitchen utilities and custodial expenses during this time unless extraordinary expenses are incurred.

2. St. Anthony Hospital, or its delegate, during its Winter Festival.

3. Altrusa, for one day during its Bazaar.

4. Such other organization and events as are mutually agreed upon by PCC and Contractor.

5. Such other events which Contractor is unable to accommodate, for any reason, such as special needs or preferences of the customer, and upon the determination and approval by PCC Manager. PCC will recommend Contractor as first choice for all catered events, unless the Contractor demonstrates or expresses an inability to meet the specific needs of a specific event.

C. PLACE SETTINGS. Contractor will make available sufficient place settings, including china, glassware and flatware, to adequately provide service for all the foregoing functions.

D. EQUIPMENT.

1. PCC’s kitchen, serving and other equipment which is available for use by Contractor is listed in **Attachment A** and from time to time may be supplemented or redacted. PCC makes no warranty as to the condition of this equipment. Contractor shall be responsible for maintenance and cleaning of this equipment.

2. PCC will be responsible for repair and replacement of kitchen equipment which is the result of ordinary wear and tear, as well as depreciation. Repair and replacement which results from misuse, or lack of necessary maintenance will be the responsibility of Contractor.

3. Contractor will make PCC management aware of the need for repairs or maintenance immediately upon the knowledge of the need of repair or maintenance to be performed on PCC equipment.

4. At termination of this contract, Contractor will leave the premises and equipment is as good as the condition at the inception of the contract. Contractor shall be liable for missing and damaged equipment or facility assets.

**Section 10. REQUIREMENTS OF CONTRACTOR PERFORMANCE.**

A. QUALITY OF GOODS. Contractor recognizes that the quality of items sold and services performed at PCC is a matter of highest concern and is the essence of the Contract. Contractor represents and warrants that all items Contractor sells will be of the highest and acceptable quality to the PCC. Special attention will be given to service or delivery with promptness and courtesy.

The PCC reserves the sole right to reject products and the sources of such products that do not meet the standard required by this agreement. The PCC also reserves the right to establish standards of service and demand that those levels of service be met to assure a quality food service experience for its clients and guests. Failure to meet standards reasonably imposed by PCC shall constitute violation of the terms herein.

B. DAYS AND HOURS OF OPERATION. The Contractor shall maintain at its expense separate telephone line in the Kitchen. Contractor shall maintain an answering machine, that shall refer to a live telephone number. Contractor shall maintain phone access and respond to client requests within two to four hours, within regular working hours. Contractor will have an email address for sales and it will be connected to the Contractor’s website. Contractor will respond to all emails for request of catering services within 2 to 4 hours, within regular working hours.

The days and hours of operation for the food and beverage services performed at the Convention Center site shall be subject to the prior approval of PCC. The Contractor must maintain and post minimum number of PCC office hours per week, Monday through Friday at a minimum of 6 hours per week to do bookkeeping, sales correspondence, meeting with vendors, marketing and meeting with customers.

C. PERSONAL BEHAVIOR OF EMPLOYEES. PCC will provide direction to Contractor’s management personnel in the quality service standards of the PCC. Contractor shall provide training and direction to its employees to ensure that the standards detailed by PCC are followed, insuring professional interaction with clients, Center staff, and internally within Contractor’s staff.

All of Contractor’s staff associated with the Center shall approach their assigned responsibilities with an attitude of customer service to the client, above and beyond common courtesy.

All employees of the Contractor shall enter and leave the PCC via the entrance(s) so designated by the PCC Manager. Only those employees actually working shall be permitted in the PCC without charge, and the Manager or its representative may remove any such employees observed in the Center at events at which they are not working. At no time will the Contractor permit the free entrance of any person not an employee for such event or events and no surplus of employees shall be permitted for any event.

D. APPROVAL OF EMPLOYEES. All employees of Contractor shall be required to possess a valid food handler's permit. Contractor will use personnel that have experience and have been provided adequate training in quality service and protocols of food service delivery. To this end the Contractor may not use volunteer organizations to supply food service labor without the express permission of PCC. The PCC Manager will notify the Contractor of any employee who in his/her judgement is not providing the level of service required by PCC. The Contractor will address the situation in an appropriate manner. PCC shall provide the Contractor proper notice so as to avoid an interruption in service to any event serviced by the Contractor.

E. RULES AND REGULATIONS. PCC shall issue reasonable rules and regulations for the operation of the food and beverage services and the Contractor shall operate in accordance with such rules and regulations, which may be amended from time to time. The decision to refuse service of alcoholic beverage to any individual shall be the sole responsibility of the Contractor.

F. MAINTENANCE CONTRACTS. Contractor shall provide the PCC Manager with copies of all maintenance contracts, and the Contractor’s cleaning and maintenance schedules on at least an annual basis. Contracts should include but not be limited to: hood cleaning (semi-annually), coolers and freezers (semi- annually), grease trap cleaning (quarterly), and oven calibration and leveling (annually). Maintenance schedules should include but not be limited to ceiling tile and light diffuser cleaning, ice machine and filter, reservoir, and drain cleaning (shall all be done semi-annually), dish washer descaling and cleaning, walk-in coolers, walls, floors and racks.

G. PEST CONTROL. Contractor shall contract with an extermination service to control vermin and pests as is necessary, performing such services as needed.

H. CONDITION OF PREMISES. All refuse and waste material created by the Contractor’s operations in all public areas shall be promptly disposed of during and immediately after each event by the Contractor. Damage done to floors, walls, windows or other property caused [in the radius] by Contractor’s negligence, shall be repaired immediately at Contractor’s sole expense. Contractor shall be responsible for washing all kitchen and service equipment. Contractor shall maintain the premises in accordance with all City regulations, public health and sanitation standards, applicable fire code and safety standards, and any and all other applicable ordinances, laws, codes or regulations. PCC shall have the right at all times to inspect the premises to insure compliance with this paragraph.

I. CONCESSION STANDS. Contractor will obtain the approval of the PCC Manager for the number and location of concession stands, bars and/or portable concession outlets open for each event.

J. WORKING CAPITAL. Contractor shall be required to maintain sufficient levels of working capital (till funds, petty cash), to adequately provide sales services and make change for the patrons of the PCC at all times.

K. FREE SAMPLES. The Contractor shall not interfere with the distribution of free food, drinks, samples, or any other items when such distribution has been authorized by PCC or its representative. Free samples of a normal sample size as approved by PCC may be given away by customers. The Contractor shall have no liability over any item served in the Center that is not prepared or served by the Contractor. Contractor will be required to provide or modify operations upon the request of a customer, when it has been approved by the City’s representative or is necessary to comply with the terms of the Agreement between the City and said Customer. Trade shows relating to food and beverage wholesale dealers and their products will be permitted to market, sell and provide samples of their products during their marketing trade shows which are closed to the general public.

L. MENU PRICING. The Contractor shall maintain a current and accurate menu on the Contractor’s web page and will furnish to the city updated menus for the PCC web page. All menu pricing increases must be reported to the PCC Manager prior to implementation. The Contractor shall post and display all menu items and prices for all permanent and portable stands.

M. DELIVERIES. Deliveries to Contractor shall be made at the service entrance of the catering kitchen Monday through Friday, 9:00am - 4:00pm, except as otherwise authorized by the PCC Manager.

N. PREMISES SECURITY. When Contractor or its vendors are present in the building without the PCC staff being present, Contractor shall be responsible for securing the premises against vandalism, theft, trespassing and illegal acts. During such times Contractor shall maintain locked outside doors and activation of the security system. Contractor will take steps as may be necessary and reasonable to protect the building. Contractor may not give anyone else permission to be in the building or to use the building without the PCC Manager’s knowledge and approval.

O. PROFESSIONAL EDUCATION AND TRAINING. The Contractor shall attend at least one trade show or training in professional food preparation to be current with new trends and practices.

**Section 11. FACILITIES.**

A. PCC KITCHEN EQUIPMENT. PCC will furnish kitchen and food service equipment, which in PCC’s opinion, is required for performance of this agreement. PCC makes no warranty as to the condition of this equipment, which is inventoried in **Attachment A** to this contract. At the inception of the lease the parties will jointly conduct a starting inventory. Said inventory shall be completed and submitted to the Convention Center Manager within 10 days of the inception of this contract and annually thereafter on the first business day of August. PCC will consider requests by Contractor for change or to modify the type, location or quantity of equipment to be furnished by PCC.

B. USE OF PCC ASSETS.

1. Personal Property.

(a) Any personal property of PCC furnished for the Contractor’s use shall, unless otherwise provided herein or approved by PCC, be used only for the performance of this contract.

(b) The Contractor shall be responsible for any loss or damage to property of PCC, which results from the negligence of the Contractor or which results from the failure on the part of the Contractor to maintain and administer that property in accordance with sound management practices. Contractor shall not be responsible for normal wear and tear.

(c) Upon loss, destruction, or damage to, any City property, the Contractor shall notify PCC thereof and shall take all reasonable steps to protect that property from further damage.

(d) The Contractor shall surrender to the City all property of the City prior to settlement upon completion, termination or cancellation of this contract.

(e). Except as described in Subsection C below, at no time is the Contractor permitted to use any City owned equipment outside of the Center, unless it relates to servicing groups and events at the Center.

(f). Contractor will maintain insurance for its food inventory. Loss to Contractor as a result of failure of PCC equipment will not be insured nor reimbursed by City.

C. PARKING LOT. Caterer shall have use of designated areas of the PCC parking lot necessary for its operations. The parking lot is not included within the area of exclusive use by Catered. Caterer may schedule use and events in the parking area with the approval of the PCC Manager. PCC may schedule and hold events which are not included within the scope of Caterer’s rights under this contract, including, but not limited to, the Cattle Barons BBQ Challenge.

D. OFF-SITE SALES AND DISTRIBUTION. The Contractor may utilize the facilities and equipment provided by PCC for purposes of the preparation and/or distribution of food or beverage items to be consumed in Off-Site sales event locations other than the PCC or its grounds and parking lots. Contractor shall pay the PCC a fee as specified in the Off-Site Sales provisions of the Section 7.

E. RIGHT OF INSPECTION OF FACILITIES. The Contractor shall provide right of access to its facilities to PCC or to any authorized agent or official of Umatilla County or the state of Oregon at all reasonable times, in order to monitor and evaluate performance compliance, and/or quality assurance under this contract.

**Section 12. SPECIFIC TERMS AND CONDITIONS**.

A. CONTRACTOR EQUIPMENT. Contractor may use its own equipment. Contractor may maintain, at its own expense, a separate telephone line in the Kitchen, if desired. PCC will provide internet access to the kitchen at no cost to the Contractor.

B. PERMITS, LICENSES, FOOD AND BEVERAGE LAWS. The Contractor will comply with all valid requirements of state and local laws and regulations pertinent to or affecting the handling and disposal of food, beverages, and other goods, or merchandise served or sold, and the Contractor will procure and keep in force all permits and licenses required by such laws and regulations.

C. OLCC LICENSING. Contractor and its employees will obtain and continue in force, at Contractor’s expense, all required Oregon Liquor Control Commission licensing issued pursuant to the laws of the State of Oregon for the PCC facility and on its property. In the event Contractor is succeeded by another after termination of this agreement, the Contractor may be required to cooperate in transfer of said license to such successor in compliance with the laws of the State of Oregon.

D. EMPLOYEES.

(1) Contractor’s staff associated with PCC shall maintain act and maintain excellence in their assigned responsibilities and customer service. Staff will possess necessary experience and be adequately trained to provide quality service and protocols in food service and delivery.

(2) All employees of Contractor shall be required to possess a valid food handler's permit.

(3) The PCC Manager will promulgate policy service standards for PCC to which Contractor shall provide training and direction to its employees to ensure compliance. The decision to refuse service of alcoholic beverage to any individual shall be the sole responsibility of the Contractor.

(4) PCC shall have the right through its officers and agents, including police officers, to eject from the premises any employee of Contractor whose conduct is illegal, inappropriate, offensive or inconsistent with this contract. Caterer waives any and all claims for damages against the City, its officers, agents and employees on account of such actions. The City will notify the Contractor of the employee and the reason for the removal from service.

(5) Contractor may not use volunteer organizations to supply food service labor without the express permission of the PCC Manager.

E. EMPLOYEE ATTIRE. All employees of the Contractor shall be neatly attired, in uniforms with the company logo. Jeans will only be allowed during “casual or western” events where jeans would be appropriate. No sweat-shirts, exercise or casual attire will be allowed to be worn by Contractors staff during events while interacting with the public. All employees must wear a name badge that is provided by the Contractor.

G. CLEAN AND SANITARY CONDITIONS. The Contractor shall maintain all food service facilities and equipment in a clean and sanitary condition in accordance and consistent with all applicable rules, demands and requirements of law, and pertinent health and sanitary codes. PCC staff may make periodic inspections of all food service areas and direct the Contractor to make such changes or modifications of condition as may be required. PCC Management shall determine acceptable performance levels relative to maintenance and sanitary conditions. Contractor shall maintain the premises in accordance with all City regulations, public health and sanitation standards, applicable fire code and safety standards, and any and all other applicable ordinances, laws, codes or regulations. A copy of all inspections will be provided to PCC Management within the 24 hours of the said inspection.

Refuse and waste material created by the Contractor’s operations in all public areas shall be promptly disposed of during and immediately after each event by the Contractor. The Contractor shall be responsible for maintaining the kitchen, kitchen storage areas, liquor bars, liquor storage areas, concession stand and concession service areas in a clean, professional and sanitary condition at all times. Damage done to floors, walls, windows or other property in the radius by Contractor’s negligence, shall be repaired immediately at Contractor’s expense. The Contractor shall be responsible for the washing of all pots, pans, small ware, utensils and dinner service equipment. The shall have the right at all times, to inspect the premise to insure compliance with this paragraph.

H. KITCHEN EQUIPMENT AT TERMINATION. At the termination of this agreement the Contractor may remove its own equipment; but will be responsible for leaving the premises in the condition as it existed at the inception of the contract, reasonable wear and tear excepted, and will reimburse PCC for damage to the premises and will replace, or reimburse PCC at fair market value, any PCC owned equipment missing at the end of this agreement.

Contractor and PCC shall jointly conduct a closing inventory, documenting any damaged and/or missing equipment. The Contractor shall be responsible for return of all items and replacement of any missing equipment and or repairing any damaged equipment at its own expense.

**Section 11. INSURANCE AND INDEMNIFICATION**

A. GENERAL COMMERCIAL LIABILITY. Contractor shall maintain general liability (CGL) insurance and, if necessary, commercial umbrella insurance, with a limit of not less than $2,000,000 per each occurrence and naming City, its elected and appointed officials, agents and employees, as additional insured. If CGL insurance contains aggregate limits, the General Aggregate limit shall be at least twice the "each occurrence" limit. CGL insurance shall have products-completed operations aggregate limit of at least two times the "each occurrence" limit.

B. PERSONAL PROPERTY INSURANCE. Contractor, at its own expense, shall maintain insurance coverage for risk of loss of personal property used in the performance of this contract, including City’s equipment, fixtures, equipment breakdown, inventory and food, including food spoilage, and assuming all such risk, naming City as additional insured, with a limit of not less than $200,000.

C. FIRE DAMAGE. Contractor, at its own expense, shall maintain insurance coverage, naming City as additional insured, for fire damage, with a limit of not less than $1,000,000.

D. WORKERS' COMPENSATION INSURANCE. The Contractor shall insure and keep insured at all times during the term of this agreement, the personnel engaged by it in the operation of this food service, pursuant to the Industrial Insurance laws of the State of Oregon.

E. LIQUOR LIABILITY INSURANCE. Contractor shall provide a policy of liquor liability insurance coverage, with coverage in an amount of not less than the amount of General Commercial Liability as required by section A herein, and that also complies with all OLCC requirements, and naming City, its elected and appointed officials, agents and employees, as additional insured, before serving any alcoholic beverages or allowing alcoholic beverages to be served upon the City’s premises or at outside catering locations.

F. INDEMNIFICATION. Contractor agrees to indemnify, defend and hold harmless the City and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of Contractor, and Contractor’s officers, agents and employees, in performance of this contract.

In accordance with the Oregon Tort Claims Act and the Oregon Constitution, City agrees to indemnify, defend and hold harmless Contractor and its officers, agents and employees against all liability, loss and costs arising from actions, suits, claims or demands for the acts or omissions of City and its officers, agents and employees, in performance of this contract.

**Section 12. STANDARD TERMS AND CONDITIONS**.

A. ENTIRE AGREEMENT. This Contract document comprises the entire agreement between the City and the Contractor and shall be governed by the laws of the State of Oregon incorporated herein by reference.

B. SEVERABILITY. Any provision of this document found to be prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remainder of the document.

C. WAIVER. Acceptance by the City of unsatisfactory performance with or without objection or reservation shall not waive the right to claim damages for breach of, or to terminate, the Contract, nor constitute a waiver of requirements for satisfactory performance of any obligation remaining to be performed by Contractor hereunder. Contractor shall fully comply with all federal, state, and local laws and regulations applicable to any and all aspects of this contract and the work performed there under.

D. TAXES, FEES AND LICENSES. Where required by statute or regulation, Contractor shall pay for and maintain in current status all permits, licenses and pay all taxes that are necessary for Contract performance. The Contractor will be required to have and maintain an Oregon Liquor Control Commission license. The Contractor agrees to collect and pay any state sales tax that may become payable during the term of this agreement and to pay state use taxes on all goods and services subject to such taxes. Contractor will maintain a City of Pendleton Business License.

E. LIENS, CLAIMS AND ENCUMBRANCES. All materials, equipment or services shall be free of all liens, claims, or encumbrances of any kind and if the City requests, a formal release of same shall be delivered to the City.

F. ATTORNEY’S FEES AND VENUE. If any action is instituted in connection with any claim or controversy arising out of this agreement, attorney fees may not be awarded and each party shall bear its own expenses of such action. Oregon law shall apply and venue for any legal proceedings involving this contract shall be the Circuit Court located in Pendleton, Oregon.

G. CAPTIONS. Section or paragraph titles or other headings contained in this Contract are for the convenience only and shall not be part of this Contract or considered in its interpretation.

H. TIME OF ESSENCE. Time is of the essence in each and every portion of this Contract.

I. ASSIGNMENT. Contractor, therefore agrees that it will not subcontract, assign, sublet, sell, hypothecate, or in any manner encumber the rights, concessions and privileges granted hereby, nor allow such subcontracting, assignment, subletting, sale, hypothecation or encumbrance to occur by operation of law or otherwise, nor will it in any way deal with its property upon the premises in such a manner as to impair its ability to perform hereunder.

J. FORCE MAJEURE. Except for payment of sums due, neither party shall be liable to the other or deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and could not have been avoided by exercising reasonable diligence. Force majeure shall include acts of God, war, riots, strikes, fires, floods, epidemics, or other similar occurrence.

Notification: If either party is delayed by force majeure, said party shall provide written notification within forty-eight (48) hours. The notification shall provide evidence of the force majeure to the satisfaction of the other party. Such delay shall cease as soon as practicable and written notification of same shall be provided. The time of completion shall be extended by Contract modification for a period of time equal to the time that the results or effects of such delay prevented the delayed party from performing in accordance with this Contract.

Rights Reserved: The City reserves the right to cancel the Contract and/or to contract with another firm to provide food and beverage catering services at the City’s facilities during the time of force majeure, and Contractor shall have no recourse against the City.

K. PUBLIC INFORMATION. Contractor may not publicize the events which it caters, without the express consent of the City. Contractor may not publicize, make disclosures or release information to the public regarding PCC events and management of the PCC facility.

L. LIENS, CLAIMS, AND ENCUMBRANCES. The Contractor will take no action which will cause any property of the City, including real property, tangible and intangible personal property, and services to become subject to any lien, claim, or encumbrance of any kind and if the City requests, Contractor will deliver to the City a formal release of same. The Contractor shall indemnity, defend, and hold the City harmless from any claims or encumbrances of any type that may be filed in contravention of the requirements of this section.

M. EXECUTION IN COUNTERPARTS. This Contract may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall constitute one and the same instrument.

THIS CONTRACT, consisting of thirteen (13) pages and 1 Attachment, is executed by the persons signing who warrant that they have the authority to execute the Contract.

Approved and Agreed to:

CITY OF PENDLETON CONTRACTOR/CATEROR

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

Robb Corbett, City Manager Contractor Name

Approved By:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Pat Beard, Manager Nancy Kerns

Pendleton Convention Center City Attorney