

**FLORENCE EVENTS CENTER  
FOOD CATERING AND CONCESSION AGREEMENT**

**BETWEEN:** City of Florence, an Oregon  
Municipal Corporation (“Center”)

**AND:** Name \_\_\_\_\_  
Dba “ \_\_\_\_\_ ” (“Contractor”)

**Tax ID #:** \_\_\_\_\_

**EFFECTIVE  
DATE:** August 1<sup>st</sup>, 2016

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**RECITALS**

**A.** City owns and operates the Florence Events Center (Center), located near the center of Florence in Lane County, Oregon. Contractor is a Caterer organized and existing under the laws of the state of Oregon, engaged in the food services business, and registered to do business in Oregon.

**B.** Catering and food concession services at the Center are essential for proper accommodation of visitors to, and events at the Center. City desires to make such services available at the Center and Contractor represents that it is qualified, ready and able to perform and furnish such services and the facilities for use in connection therewith, as provided in this Food Catering and Concession Agreement (Agreement).

**C.** Because the premises to be leased under this Agreement are located in a municipally owned and operated facility, it is in the public interest that Contractor food service business be operated in a proper and first-class manner with a high quality of service and in a clean, pleasant, and safe atmosphere. It is the understanding of the parties that to further the public interest served by the Center, the provisions of this Agreement shall be strictly adhered to by Contractor.

**EXHIBITS**

The following are attached and incorporated as part of this Agreement:

- Exhibit A - Standard Contract Provisions
- Exhibit B - Proposal Submitted by Contractor in Response to RFP No. 2016-00
- Exhibit C - Depiction of Center Facilities
- Exhibit D - Schedule of Kitchen Equipment

## **AGREEMENT**

**SECTION 1. Concession Rights to be Granted.** Center grants to Contractor the non-exclusive right to conduct and operate food concession and catering services at the Center, under the terms and conditions described below, for the purpose of providing food service at the Center for public and private events. Contractor shall not use the Center for other purpose or conduct any other business without Center's prior written consent.

### **SECTION 2. Initial Term;**

**2.1. Initial Term.** Subject to rights of earlier termination, as hereafter provided, the initial term of this Agreement shall commence on August 1, 2016 and shall expire on July 31, 2017.

**2.2 Renewal.** Contractor shall be entitled to renew the term of this Agreement for a one (1) year renewal term, with each term commencing on the first day of **August** and ending on the ensuing the last day of **July**, subject to the following conditions:

- i. Notice of Renewal.** Contractor shall deliver a written notice to Center of its decision to renew not later than 3 months prior to the year of renewal.
- ii. No Breach.** Contractor shall not be in breach of any term or condition of this Agreement as of the date of notice or on the date of renewal.

**2.3 Fiscal Year.** As used in this Agreement, the term "fiscal year" means any twelve-month period beginning on the first day of **August** and ending on the ensuing last day of **July**.

**SECTION 3. Rental and Use of Kitchen Facilities and Equipment.** During the term of this Agreement, Center hereby sets aside and permits Contractor to operate its food service business from the kitchen facilities at the Center depicted in Exhibit C as the areas marked DISHWASHING, RESTROOM, KITCHEN, and CONCESSIONS. (Kitchen Facilities), together with all fixtures and equipment described in Exhibit D.

**3.1 Right of Use.** Contractor's possession and use of the Kitchen Facilities shall be exclusive except as otherwise provided in this Agreement.

#### **3.2 Kitchen Maintenance Obligations.**

**3.2.1 Routine Maintenance and Cleaning.** Contractor shall be solely responsible for maintaining the Kitchen Facilities in good repair, and clean condition and appearance. Contractors' maintenance obligations will include, but not be limited to routine cleaning of kitchen and equipment, including grease traps and hood filters. Contractor will supply all necessary equipment, soap and chemicals for kitchen cleaning. Upon termination of this agreement, Contractor shall leave all kitchen equipment in good operating condition.

**3.2.2 Inspection, Repair and Replacement.** Contractor shall perform, on a regularly scheduled basis, routine inspections of all kitchen equipment to determine whether such equipment is in need of repair or replacement. Contractor shall immediately report to the Center Director any required repair or replacement. In each case, Contractor's report shall include a recommendation for repair or replacement and a cost estimate. Any recommendation for replacement will describe the make and model of the recommended replacement part and, to the extent possible, at least three price quotes from reputable vendors. A recommendation for repair shall include an estimate from a reputable and qualified equipment repair service.

The Center Director shall have sole discretion to order the manner in which the defective equipment shall be replaced or repaired. Costs of equipment repair and replacement shall be allocated between the Center and Contractor as follows:

- i. Contractor shall be solely responsible for all costs of repair and replacement for equipment damaged by its officers, employees, agents, subcontractors and sub-lessees;
- ii. Center shall pay for all costs of repair and replacement of Center owned equipment not described in clauses (i) above.

**3.3. Supplies and Equipment Provided by Contractor.** The Center will provide a list of Center owned equipment and supplies that are included with the kitchen rental including items such as plates, glassware, flatware, pots, pans and miscellaneous utensils. Contractor agrees to replace any items missing from the list due to breakage or theft. The Contractor agrees to supply;

- i. All cleaning equipment and supplies, including dishwashing materials
- ii. Any equipment needed to provide catering and concession services above and beyond the equipment supplied by the Center
- iii. Linens and paper supplies.

In addition to the provision of linens for catered events and concessions, Contractor shall rent linens to Center for other Center and off-site uses at Contractor's wholesale rental cost.

**3.4 Alterations, Fixtures and Signs.** Contractor shall make no alterations, improvements or additions to the Kitchen Facilities or change the decor of any part of the Center without Center's prior written approval. Contractor shall not install any fixture, sign, device or appurtenance on any exterior or semi-enclosed surface of the Center building without the written permission of Center, which shall not be unreasonably withheld. Center may specify conditions for installation of such fixtures, signs, devices or appurtenances, including, but not limited to, painting to match surrounding building colors. Approval for a sign or advertising device shall include the location, type, size, and design of the proposed sign or advertising device.

### **3.5 Rental for Kitchen Facilities.**

**3.5.1 Monthly Kitchen Rental Fee.** During the term of this Agreement, Contractor shall pay a monthly rental fee for the Kitchen Facilities. The monthly kitchen rental fee shall be \$\_\_\_\_\_ due by the 15<sup>th</sup> of each month.

**3.5.2 Kitchen Utilities.** Kitchen utilities including trash disposal, usage of water, electric and propane are included in the monthly kitchen rental fee.

**3.5.3 Manner of Payment.** All monthly rental and propane fees under this Section 3.5 shall be paid by the 15<sup>th</sup> day of each month during the term of this Agreement.

**3.6 Sub-Lease.** Contractor may sublease all or a part of the Kitchen Facilities with Centers prior written consent, which consent will not be unreasonably withheld, provided that: (1) Contractor shall fully disclose to the Center all terms and conditions of each proposed sublease; (2) Center shall not be required to allow any sublease which, in the sole discretion of the Center Director, would impair food and beverage services for any Center-sponsored or Center-located event, and (3) Center shall have the right to determine what percentage of the sublease payment shall be paid to Center. Contractor shall supervise, and shall be solely responsible for, all activities of its sub-lessees. Any payment due to Center as a result of a sub-lease shall be an absolute obligation of Contractor, due and payable on or before the 15<sup>th</sup> day of each month following the first date of the sub-lease and not dependent on Contractor's collection of lease payments from the sub-lessee.

**3.7 Annual Inspection.** It is anticipated that the Center will perform an annual maintenance inspection of the Kitchen Facilities. Any deficiencies that are identified in the inspection shall be promptly cured by Contractor. Nothing in this provision shall require an annual inspection or limit Center's other rights to inspect the Kitchen Facilities at any time during the term of this Agreement. Center's failure to inspect or identify deficiencies shall not release Contractor of its maintenance obligations under this Agreement.

**3.8 Use by Private Parties.** Subject to reasonable notice and availability, Contractor will allow groups and individuals who are not professional food service providers to use the Kitchen Facilities for private events such as weddings and other local community events, subject to restrictions mutually agreed to by Center and Contractor. No private party shall be entitled to use any equipment or furnishings that are owned by Contractor, without Contractor's prior written consent.

## **SECTION 4. Facilities Provided by Center; Obligations of Center.**

**4.1 Facilities and Equipment.** Contractor will have full access to Center owned facilities described in "Exhibit C" and use of equipment described in "Exhibit D" as provided in the Monthly Kitchen Rental Fee.

**4.2 Trash.** Contractor shall be responsible for placing trash in sealed plastic bags in a dumpster. Center will supply trash removal. Contractor will recycle waste products to the maximum extent that is economically feasible.

**4.3 Storage.** Center shall endeavor and cooperate to provide adequate storage for Contractors supplies and equipment within the facility. Center shall not be responsible for loss of Contractor equipment or supplies kept on Center premises.

**4.4 Office Equipment.** Center shall allow Contractor to use the Centers photocopier when not needed for Center business. Center may request reimbursement at the current rate for copies based on City of Florence Fee Schedule.

**4.5 Repair of Kitchen Equipment.** Center shall promptly repair or replace any kitchen equipment or fixture upon Concessionaires report of damage as described in Section 3 of this Agreement.

**4.6 Scheduling.** Center shall cooperate with Contractor to schedule all Center and Center-sponsored events in a timely manner to enable Contractor to provide catering and concession services.

**4.7 Kitchen Tours.** Center shall have the right to conduct tours of the Kitchen Facilities for existing and potential clients.

**SECTION 5. Contractors Services** Contractors rights and obligations to perform food catering and concession services under this Agreement shall be performed as described in this Section.

**5.1 Catering.** Catering functions are those where Contractors fees are billed to a single client, rather than to consumers. Catering functions vary in size and include, but are not limited to, food and beverage service to banquets, meetings, and backstage service. Catering services shall include planning of menus, purchasing, preparation, set-up and service of all food, beverages, linens, plates, flatware, provision and management of all food servers and bartenders, and food event clean-up and trash removal. Contractor shall provide catering for the following events:

i. Any events sponsored by the Center, including events held outside of Center facilities;

ii. All other events held at the Center for which the event sponsor requests Contractors catering services. Event sponsors shall have discretion to select an outside catering contractor for a particular event, subject to Contractors supervision as described in subsection 5.2. Event sponsors are solely responsible for payment to Contractor. In no event will Center be responsible for any amount due to Contractor from any non-Center event sponsor.

**5.2 Kitchen Management.** Contractor shall serve as the kitchen manager whenever

outside licensed caterers are selected to prepare and serve food for an event at the Center. As kitchen manager, it shall be Contractors duty to supervise the use of the Kitchen Facilities by outside licensed caterers to insure proper use of Centers equipment and to insure that proper clean-up procedures are followed. Contractor may provide kitchen management services for non-professional users described in subsection 3.8, at Contractors discretion.

Contractor's fees to the outside persons for providing kitchen management services shall be \$50.00 for the first two hours and \$25.00 per hour for each additional hour until the completion of the outside person's services. Fee includes one kitchen staff supervisor. Contractor may set advance deposit requirements at Contractors discretion within good business practices.

Contractor, when acting as kitchen manager for outside catering contractor, shall cooperate in good faith and provide assistance to outside catering contractors to insure that Centers clients receive the best quality food presentation.

**5.3 Concession Services.** Concession services are those in which the consumers are charge separately for items of food and beverages. Contractor will provide standard concession services for all Center events for which food or beverage concessions are required, including, but not limited to the following:

**5.3.1 Public Events.** Contractor shall serve as Centers exclusive professional caterer and concessionaire for food and beverage sales at all events other than; festival events presented by organizations in which the Contractor agrees to waive food and beverage exclusivity and negotiate reasonable terms in good faith with the Center and presenting organization in order to promote festivals (*Festival being defined as an annual celebration incorporating a series of activities and allowing for multiple food and/or beverage vendors*) and; events for which Center does not want food or beverage services provided. Concessions may include popcorn, hotdogs, candy, soda, other similar snacks foods, beer and wine. For public performance events, Contractor shall maintain an open concession stand from the time the Centers doors open for the scheduled event until Centers approved *concession stand* closing time. For other events such as art shows and flat floor shows, Contractor shall coordinate concession sales hours with the Center Director. Contractor shall operate multiple sales locations within facility when appropriate to maximize concessions sales. Center's clients may provide their own non-professionally catered food such as "pot luck" meals, store bought pastries and non-alcoholic beverages. Pre-packaged food and beverage products may be sold at events for off-site consumption only as to not compete with concession sales.

**5.3.2 Centerplate Meals.** Contractor may offer Centerplate meals prior to theater productions. Meals will be served in the manner and location stipulated by Center.

**5.4 Off-Premise Catering.** Contractor shall have the right to use the Kitchen Facilities to provide catering or other food and beverage services for events that are not sponsored by the Center or held at the Center, subject to the following conditions:

- i. Center-sponsored events, events held at the Center and Center concession duties shall always have preference over Contractors other business activities; and
- ii. Contractor shall pay Center the concession fees described in Subsection 7.1(iii) of this Agreement.

## **5.5 Performance Standards.**

**5.5.1 Licensing.** Contractor shall secure and maintain proper Oregon Liquor Control Commission (OLCC) licensing to permit service of beer, wine, and hard liquor. Contractor shall be the exclusive provider of beer, wine and hard liquor for Center events except for events which are OLCC-approved wine- or beer-tasting events.

Contractor shall pay all license fees for alcohol sales and service and all other licensing fees for operation of food service within the Center.

**5.5.2 Health Department Requirements.** Contractor shall maintain proper sanitary cleaning procedures in the kitchen and comply with all State, County, or City sanitation regulations.

**5.5.3. Food Quality and Value Standards.** Contractor will strive to achieve and maintain a high level of excellence in its menu and in the quality and freshness of its supplies and food preparation. Contractor will keep informed of current trends in consumer food preferences and products and will have a formal program for quality control and improvement. Food quality and price shall be at least consistent with the quality and price offered by concessionaires providing similar services within Lane County, Oregon.

**5.5.4. Recyclable Products.** Contractor shall use recyclable products to the maximum extent economically feasible in the performance of the contract work set forth in this document.

**5.5.5 Deliveries.** Contractor shall coordinate deliveries so as not to disrupt activities and operations of the Center.

**5.5.6 Manager.** Contractor shall appoint a qualified and accessible Manager of its operations at the Center, who shall have full authority to act for and on behalf of Contractor. The Manager shall be available by phone during normal Center hours. At all times during the Manager's absence, a designated subordinate shall be in charge and available at the Center.

**5.5.7 Personnel.** Contractor shall provide all personnel necessary to perform all catering and concession services to be performed by Contractor hereunder, including, but not limited to, chefs, food preparers, food servers and cleaning services. Contractor shall employ adequate numbers of qualified personnel to fulfill client needs in a professional, courteous manner.

Contractors personnel will be well trained and well-groomed employees at all times, and

Contractor shall not permit its agents or employees to conduct themselves in a loud, noisy, boisterous, offensive, or objectionable manner.

Contractor shall not solicit business in any manner whatsoever, except for the use of menus and signs constructed and maintained in accordance with the provisions of this Agreement.

Contractor shall not permit its employees or agents to operate any equipment in an unsafe or unsanitary manner at the Center.

Contractor shall dispense with the services of any agent or employee whose conduct Center deems detrimental to the best interests of the public or the operation of the Center. It is specifically understood and acknowledged by Contractor that the conduct of Contractor's agents and employees is of the utmost concern to Center in light of the public interests served by the Center, particularly with regard to safety. Any dismissal of an employee or agent of Contractor pursuant to the exercise of Center's authority herein shall be consistent with applicable law and Contractor's obligations under any applicable collective bargaining agreement.

**5.5.8. Price Increases.** Center must approve all increases in food, beverage, labor and gratuity charges before implementation. Contractor shall provide details of increased operating expenses with the request for a price increase.



**5.5.9. Management and Cost of Operation.** With the exception of utilities provided by Center hereunder, Contractor shall bear at its own expense all costs of operating the concession and meet all expenses in connection with the use of the Kitchen Facilities and rights and privileges granted by this Agreement, including, without limitation by reason of enumeration, permit fees, license fees and taxes and assessments lawfully levied or assessed upon Contractor's property and upon the Kitchen Facilities for structures or improvements at any time situated thereon. Contractor shall be responsible for processing any credit card charges through their own system and bank.

**SECTION 6. Marketing and Promotion.** Center and Contractor agree that it is in their mutual interest to promote Center activities. Contractor shall meet periodically with the Centers Director to review progress and new client solicitations.

Contractor shall use its good faith efforts to assist in securing new users of the Center by employing proper sales techniques, including meeting with potential clients, and assisting in preparation of current printed menus and other sales aids. Where Center and Contractor agree that it would be helpful to attract or the business of certain clients or potential clients Contractor shall cooperate in the promotion of the Center by offering catering services at a discounted rate not to be less than 25% of listed prices.

Contractor agrees to spend a minimum of \$1,000 annually on a mutually agreed advertising program that will enhance and supplement both the Center and Contractors overall programs. Contractor will not use the Centers trademarks or other proprietary property in any graphic, written or pictorial advertising material without prior review and approval by Center, but Center will render reasonable assistance in such regards to Contractors advertising efforts. Contractor will include documentation of its advertising expenditures for each twelve month period in the annual report described in Section 8.2.

**SECTION 7. Concession Fees.**

**7.1 Percentage Fees.** As consideration for the Contractor's use of the Center to generate customers, in addition to rental and other fees specified elsewhere in this Agreement, Contractor agrees to pay to Center the following concession fees:

**i. Catering Revenues.** Contractor agrees to pay Center \_\_\_\_\_% of its gross revenues from catering for events held at the Center and for off-site Center-sponsored events.

**ii. Concession Revenues.** Contractor agrees to pay Center \_\_\_\_\_% of its gross revenues from all concession activities, including Centerplate meals:

**iii. Off-Premise Catering.** Contractor agrees to pay Center \_\_\_\_\_% of its gross revenues from food prepared in Center's Kitchen Facilities as described in section 5.4.

**7.2 Time and Manner of Payments.** On or before the 15th day of each month, Contractor shall furnish to Center a written statement by the 5<sup>th</sup> of the month, signed and certified by an officer or authorized agent of Contractor, setting forth the amount of Contractor Gross Revenues for each category described above during the calendar month preceding. Contractor shall remit with such statement any concession fees due by the 15<sup>th</sup> for such month. Payments and statements due from Contractor under these provisions shall be delivered to the person and/or place designated by Center.

**7.3 Late Payment/Statement Administrative Charge.** The parties recognize that Center will incur additional administrative costs if Contractor is late in making its monthly payments or providing the monthly statements required by this Section 7.2, and that the amount of those costs is difficult to determine with certainty. Center may assess and, if it does, Contractor agrees to pay, a late charge of \$10 per day for each day on which a payment due under this Section is late.

**7.4 Limitation on Billing Format.** Contractor acknowledges that the payments by Contractor to Center under this Agreement are for Contractors' use of the facilities at the Center and that none of those payments reflects a fee that is imposed by Center upon customers attending Center events. Contractor understands that Center does not support the practice of transferring Contractors' obligation for payment of the Concession Fee due herein to its customers. Contractor is prohibited from using the following words in any form: City, Center, Government, Florence, Concession, Access, Passage, Cost of Doing Business, Fee, Toll Assessment, or Tax in identifying any surcharge the Contractor may impose on Center customers. Any charges made by Contractor to its customers in an attempt to recover its costs in operating under this Agreement must appear above the line and before any total fee to which legal and legitimate taxes are applied. Contractor is prohibited from stating or implying, in writing or verbally, that the City or Center imposes or approves of any such direct charge to a customer. If Contractor elects to separately state a charge, surcharge or fee to recover the Concession Fee pursuant to this subsection, Contractor may not exclude that charge from Gross Revenue.

**7.5 Calculation of Gross Revenues.**

**7.5.1 Gross Revenues.** Gross catering revenues are defined as all income from consulting and sales made by Contractor in connection with any catering event at the Center for which Contractor does not bill Center directly. Gross revenues for any other category described in subsection 7.1 shall include all income from consulting, sales, and service activities related to the revenue category. When gratuities are paid both to employees and owners who are acting as additional service staff, owner's portion of the gratuity shall be considered part of gross revenues.

Gross revenue shall be determined in accordance with Contractors usual accounting procedures, so long as such procedures accurately reflect the value of all income, whether in cash, trade or otherwise accepted by Contractor as compensation for its goods and services.

**7.5.2 Exclusions from Gross Revenue.** The following transactions and charges are specifically excluded from Gross Revenues.

- i. Gratuities paid to employees or received by Contractor when owners are acting as sole service staff.
- ii. Sales or similar taxes or fees imposed by federal, state, county, or municipal law which are separately stated to and paid by the customer and which are payable directly to the taxing authority by Contractor, provided that this exclusion does not include income taxes, franchise taxes, taxes levied on Contractors activities, facilities, equipment, or real or personal property, or payroll taxes.
- iii. Sums received from customers or insurance carriers for the damage, loss or conversion of Contractor's personal property, provided that this exclusion shall not include sums received to compensate Contractor for lost sales or profit.
- iv. Any other transactions or charges specifically approved in writing for exclusion by the Center in response to a written request from Contractor.
- v. The rental of Contractors own equipment and linens to off site users.

**7.5.3. Inclusion in Gross Revenue Unless Expressly Excluded.** Unless a sum is expressly and particularly excluded from Gross Revenue under the foregoing subsection of this Agreement, as it may be amended from time to time, that sum shall be included in Gross Revenue; sums that may be derived from sources similar but not identical to those described in subsection 7.4.1 shall be included in gross revenues from concessions. Gross revenue may not be reduced by volume discounts unless the discount is documented for each transaction and the documentation is submitted with Contractors monthly report.

## **SECTION 8. Records and Reports; Audit.**

**8.1 Records.** Contractor shall keep and maintain in accordance with generally accepted accounting principles and procedures, complete, accurate, and customary records and books of account concerning its operations at the Center. Forms of records, accounting procedures, and type of cash registers used by Contractor shall be subject to approval by Center to the extent Center requires such approval. Contractor shall keep all records relating to gross revenue for a period of not less than thirty-six (36) months.

**8.2 Annual Report/Adjustment.** Within forty-five (45) days after the close of each fiscal year, Contractor shall submit to Center a written statement detailing the total Gross Revenue during the immediately preceding fiscal year, in the aggregate as well as by concession fee category, as well as the aggregate of concession fees paid by Contractor during that fiscal year and charges made to Center for Center-sponsored event catering during that year. Each annual report

will include documentation and a report of Contractors advertising expenditures for the year just completed.

**8.3 Inspection and Audit by Center.** Center shall be entitled at all reasonable times during business hours, through its duly authorized agents, attorneys or accountants, to examine or audit and make copies of any and all information in Contractor's records and books of account in any way bearing on Contractor's Gross Revenue and its operations at or from the Center. Contractor shall provide full cooperation in Center examination of Contractor's procedures in maintaining records and books of account. Upon prior written request by Center, such records as Center shall desire to inspect shall be made available at the Center at no charge to Center. If any examination or audit by Center discloses that Contractor's Gross Revenue, as previously reported for any month during the period inspected, were understated, Contractor shall, after written notice by Center specifying the amount due, immediately pay to Center the additional fee due, together with interest at the rate of 1.5 percent per month on such shortages of fees from the time such fees became due. If any understatement is in excess of two percent (2%) of Contractor's actual Gross Revenue for the period examined or audited, Contractor shall immediately reimburse Center the cost of the examination or audit.

**SECTION 9. Environmental Management and Compliance.** Contractor's obligations under this Agreement shall also specifically include but not be limited to strict and timely compliance with all environmental laws. Contractor shall insure that all operations at the Center comply with all environmental laws and orders of any governmental authorities having jurisdiction under any environmental laws.

Contractor shall exercise extreme care in handling hazardous substances. For any substance which enters the Center as a result of the intentional or negligent act or failure to act of Contractor, its agents, affiliates, subtenants or customers, Contractor shall undertake any and all preventive, investigatory or remedial action (including emergency response, removal, containment and other remedial action) which is either required by any applicable environmental laws or by orders of any governmental authority having jurisdiction under such laws. Contractor shall take such action, even though not required by any environmental law or order, which is necessary to prevent or minimize substantial third-party property damage, damage to the environment, or personal injury or threat of any such damage or injury, by releases of or exposure to hazardous materials in connection with its operations under this Agreement.

In the event Contractor fails to perform any of Contractor's obligations under this Section, Center may, but shall not be required to, perform such obligations at Contractor's expense. In performing any such obligations of Contractor, Center shall at all times be deemed to be the agent of Contractor and shall not by reason of such performance be deemed to be assuming any responsibility of Contractor under any environmental law or to any other third party.

At any time Center requests, and such requests shall be reasonably made, Contractor shall provide to Center further assurance of Contractor's compliance with this paragraph. The assurances shall be in a form and substance satisfactory to Center, at Center's sole discretion.

Nothing in this Section shall be construed to prevent Contractor from seeking indemnity or contribution from any persons who cause environmental contamination.

As used in this Agreement, the term "environmental laws" means all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment.

In this Agreement, the term "hazardous materials" is used in its very broadest sense and refers to materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or to the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The term includes, without limitation, petroleum products or crude oil or any fraction thereof and any and all hazardous or toxic substances, materials or wastes as defined by or listed under the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Comprehensive Environmental Response, Compensation and Liability Act, and any other of the environmental laws.

**SECTION 10. Taxes.** It is understood that the Center property has been removed, by law, from the Lane County, Oregon tax rolls. However, in the event the Center property is returned to the tax rolls for any reason whatsoever, and Center is thereby obligated to pay taxes thereon, Contractor shall pay as additional monthly rental one-twelfth (1/12th) of the taxes attributable to the Kitchen Facilities and improvements thereon, at the time each rental fee payment is due, commencing with the due date immediately following Center's notification to Contractor of the amount of such taxes that are payable by Contractor. The taxes attributable to the Kitchen Facilities shall be based on the ratio of the square-footage of the Kitchen Facilities, or relevant part thereof, to the total square-footage of the property being taxed, provided that, if apportionment based on square-footage would, in Center's sole determination, result in an unfair allocation as between all concerned entities, the Center may use any other method of apportionment of taxes that results in a reasonably proportionate allocation of such taxes to Contractor.

**SECTION 11. Compliance with Laws, Regulations, and Rules.** In addition to all other provisions of this Agreement governing Contractors actions and compliance with laws, during the term of this Agreement, Contractor shall at all times strictly observe and comply with the following:

**11.1 Center Rules.** All applicable rules, regulations, orders and restrictions now enforced or hereafter adopted by City with respect to the operation of the Center.

**11.2 Other City Directives and Rules.** All orders, directions, rules, regulations or restrictions given or imposed by City with respect to use of roadways, driveways, curbs, sidewalks, parking areas and public areas at the Center.

**11.3 Laws and Ordinances.** All applicable laws, ordinances, statutes, rules, regulations or orders of federal, state and local governmental authorities and agencies, including but not limited to the requirements of the Americans with Disabilities Act, lawfully exercising authority

at or over the Center or the Contractor operations under this Agreement, including, but not limited to, laws, rules and regulations governing sewer and restaurant waste disposal restrictions and requirements in connection with the Kitchen Facilities.

**11.4 Standard Contract Provisions.** A copy of the City of Florence Standard Contract Provisions, shall be attached as Exhibit "A". In the case of any conflict between the provisions of this Agreement and the Standard Contract Provisions, the requirements of federal law, then State law, and then the provisions of this Agreement shall control.

**SECTION 12. Insurance.** Contractor shall obtain and maintain continuously in effect at all times during the term of this Agreement, at Contractor sole expense, the following insurance:

**12.1 Commercial Public Liability Insurance.** A commercial public liability insurance policy, including coverage for products and completed operations, independent contractors, contractual liability, and liquor liability covering, bodily injury, property damage and personal injury, with a combined single-limit coverage of not less than One Million Dollars (\$1,000,000) per occurrence for each type of claims and One Million Dollars annual, on an occurrence basis. The liability policy shall name Center as an additional insured, protecting Center from any and all claims, losses, actions, or damages resulting directly or indirectly from any act, default, error or omission of Contractor or as a result of the joint, concurring or contributory act, omission or negligence of Contractor and Center arising in connection with or related to Contractor operations at the Center. The liability policy shall contain a "tenant's legal liability" endorsement.

**12.2 Automobile Liability Insurance.** Automobile liability insurance is required for all automobiles used by Contractor in its business with coverage limits of not less than \$2,000,000 per occurrence and annual aggregate.

**12.3 Workers Compensation Insurance.** Workers compensation insurance in the amounts and form required by the workers compensation insurance laws in the State of Oregon, and employers liability coverage.

**12.4 Policy Requirements.** The insurance policies specified above shall be approved as to the form and surety by Center and shall bear an endorsement entitling Center to at least thirty (30) days prior written notice of any material change, non-renewal or cancellation. A copy of all such policies, or certificates thereof, satisfactory to Center, shall be delivered to Center prior to the execution of this Agreement and commencement of operations by Contractor. All policies required by these provisions shall be written as primary policies, not contributing with or in excess of any coverage which Center may cover and shall have loss payable clauses in favor of and satisfactory to Center.

**12.5 Property Insurance.** Contractor shall carry adequate all-risk property insurance insuring all of its personal property used or to be used in connection with this Agreement together with all tenants' extended-form all-risk property insurance insuring the Kitchen Facilities against damage and naming Center as an additional named insured.

**12.6 Waiver of Subrogation.** Contractor hereby waives all rights of recovery against Center and Centers agents, officers and employees for any loss or damage, including consequential loss or damage caused by any peril enumerated in a standard fire insurance policy with endorsement for extended coverage, and in the event of an insured loss, Contractor's insurance company shall not have a subrogated claim against Center. The foregoing waiver shall never apply to any loss or damage caused by Hazardous Substances or any breach of Environmental Law.

**12.7 Subcontractors and Sub-Lesseees.** Contractor shall insure that any subcontractor or any sub-lessee or other entity permitted to use the Kitchen Facilities shall provide evidence of and keep in effect policies of workers compensation and liability insurance subject to all terms stated above.

**SECTION 13. General Indemnification.** Without diminishing any of Contractors obligations under Section 9, Contractor shall indemnify and hold Center harmless from and against any and all claims, losses, actions or damages made or suffered by any person for death, bodily injury or property damage which results directly or indirectly from any act, default, error or omission arising in connection with or related to Contractor operations at the Center or under this Agreement. In the event any such action or claim is brought against Center, Contractor shall, upon notice of the commencement thereof, defend the same at its sole cost and expense, promptly satisfy any judgment adverse to Center or to Center and Contractor, jointly, and reimburse Center for any loss, cost, damage or expense (including legal fees) suffered or incurred by Center. The foregoing liability of Contractor shall not be diminished by the fact that any death, injury, damage or loss, claim, cost or expense may have been, or may be alleged to have been, the result of the joint, concurring or contributing act, omission, or negligence of Center, unless caused by or resulting from the sole negligence or willful misconduct of Center. Contractor's obligations under this Section shall survive termination of this Agreement.

**SECTION 14. Contractors Default.** Contractor shall be in default under this Agreement upon the occurrence of any of the following events:

**14.1 Default in Payment.** Contractor's failure to pay any rental or concession fee when due, and such failure continues for ten (10) days after written notice is given to Contractor, provided Center shall not be required to give written notice more than once during any year of this Agreement. After notice has been given once during a lease year, Contractor shall be deemed in default, without the requirement of notice and the opportunity to cure, for any subsequent failure to pay rental during the same lease year if such failure continues for ten (10) days after the same becomes due.

**14.2 Violation of Other Covenants.** Upon Contractor's failure to perform any obligation under this Agreement or cure any failure of performance, other than the failure to pay rental and concession fees, within thirty (30) days after notice of such failure or demand for cure is given by Center to Contractor.

**14.2.1 Food Service and Quality.** For issues regarding food or service quality, a written warning due to multiple client complaints of food or service quality will be given to Contractor with a probation period stated. Additional new complaints during the probation period may result in thirty days written notice. Any complaints occurring during the notice period will constitute a default under this Agreement.

**14.2.2 Subsequent Failure to Comply.** If Contractor cures a deficiency in the manner described in this subsection 14.2, Contractor's subsequent failure to comply with the same term or condition shall constitute a default without requirement of notice or opportunity to cure.

## **SECTION 15. Termination by Contractor; Abatement.**

**15.1 Termination for Breach.** Upon sixty (60) days prior written notice to Center, if Contractor has notified Center in writing that Center is in default in the performance of any covenant or obligation contained in this Agreement, which notice specified the nature of the default, and Center has failed to cure or to make satisfactory arrangements with Contractor for the commencement and prosecution of a cure of such default within thirty (30) days of the notice of default.

**15.2 Abatement.** There shall be an abatement of rental during any period of more than ten (10) consecutive days in which Contractor is not able to use the Kitchen Facilities.

**SECTION 16. Termination by Center.** This Agreement may be terminated by Center upon the occurrence of any one or more of the following events:

**16.1 Contractor Default.** Immediately, upon the occurrence of an event of default described in Section 14.

**16.2 Casualty.** The destruction of all or a material part of the Center or Center facilities by fire, explosion, earthquake, other casualty, or acts of God.

**16.3 For Any Reason.** At any time and for any reason, considered to be in the best interests of Center, as determined by Center in the exercise of its sole discretion, upon giving ninety (90) days prior written notice to Contractor.

**16.4 No Prejudice.** A termination of this Agreement for any reason shall not prejudice any other remedy for breach of contract, damages, non-payment or otherwise which Center has under this Agreement or under law.

**SECTION 17. Center's Right to Act.** In the event Contractor fails to perform any obligation under this Agreement, Center shall have the right, but not the obligation, to take action that Contractor has failed to take, after giving at least thirty (30) days' notice in advance of taking such action, except in the event of an emergency, as determined by Center, in which case no advance notice shall be required. In the event Center takes such action, Contractor shall promptly pay to



Center, upon demand, the sum or sums expended or incurred by Center to take such action. Any such action taken by Center shall not by itself constitute a termination of this Agreement. Conversely, any such action shall not constitute a waiver by Center of Contractor's default of Center's remedies on account of such default.

**SECTION 18. Property Rights Upon Termination.** Upon termination of this Agreement, whether by expiration or by earlier termination, Contractor shall remove all of its personal property and all improvements installed by Contractor, and restore the Kitchen Facilities to the condition existing when originally turned over to Contractor, ordinary wear and tear excepted. Except as provided herein, Contractor shall be deemed to have abandoned to Center any of its personal property and improvements which it has failed to remove from the Center within the fifteen (15) days following termination, unless Center grants in writing a longer period for removal. In the event of abandonment, Center may remove Contractor property and improvements and charge Contractor the reasonable expense of removal and restoration. For purposes of this Section, all fees and charges payable by Contractor to Center under this Agreement shall be considered as rental and the relationship shall be considered as that of a landlord and occupant.

**SECTION 19. Access by Center.** Contractor shall allow Center's authorized representatives access to the Kitchen Facilities at all reasonable hours for the purpose of examining and inspecting the Kitchen Facilities incidental to or connected with performance of Contractor or Center's obligations under this Agreement or any exercise of its governmental function.

**SECTION 20. Alterations and Improvements by Center.** Center shall have the right to regulate, police, and further develop, improve, reconstruct, modify, or otherwise alter the Center or any portion thereof, including the Kitchen Facilities, in such manner as Center sees fit without any liability to Contractor, except as provided herein.

**SECTION 21. Miscellaneous Provisions.**

**21.1 Independent Contractor.** Nothing in this Agreement is intended or shall be construed to create or establish Contractor as anything but an independent contractor. Contractor shall not be deemed an agent of Center.

**21.2 Assignment and Sublease.** Contractor shall not assign, transfer, sublease, pledge, surrender, or otherwise encumber or dispose of the Kitchen Facilities or any interest therein, or permit any other person to occupy the same, without the prior written consent of Center. The restrictions of this Section shall not apply to any assignment by Contractor to a corporation into or with which Contractor may merge or consolidate upon such successor corporation's express assumption of Contractor obligations hereunder. Any assignment, sublease, or transfer or any type of Contractor obligations permitted hereunder to which Center may consent shall not operate to release or discharge Contractor of its obligations under this Agreement.

**21.3 Binding Effect.** Subject to the restrictions set forth in Section 21.2, this Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the parties

hereto.

**21.4 Notices.** Any notices required to be given under this Agreement shall be sufficient if sent by either: first class mail and certified mail, return receipt requested, postage prepaid, or by a recognized overnight courier service, or by a tested or otherwise authenticated facsimile, addressed to the parties as shown below or to such other address or facsimile as a party may designate to the other in writing from time to time. A notice mailed shall be deemed delivered on the date postmarked.

To Center: Florence Events Center  
Attn: Center Director  
715 Quince Street  
Florence, OR 97439  
FAX: 541-902-0991

To Contractor: Name \_\_\_\_\_  
Address \_\_\_\_\_

**22.5 Attorney Fees.** If any suit or action is instituted in connection with any controversy arising under this Agreement, the prevailing party shall be entitled to recover and the losing party agrees to pay, in addition to costs, such sum as the trial court may adjudge reasonable as attorney's fees and upon appeal therefrom, such sum as the appellate court may adjudge reasonable as attorney's fees. This provision shall survive termination by either party with respect to causes of suit or action that survives termination.

**22.6 Limitation.** Nothing in this Agreement shall be construed or interpreted in any manner as limiting, relinquishing or waiving any rights of ownership enjoyed by Center in any Center property, including the Kitchen Facilities, or in any manner limiting, relinquishing or waiving Center's control over the operation and maintenance of the Center property or in derogation of such governmental rights that Center may possess, except as otherwise specifically provided to the contrary by this Agreement.

**22.7 Non-waiver.** Waiver by either party of strict performance of any provision of this Agreement shall not be a waiver or prejudice the party's right to require strict performance of the same provision in the future or any other provision.

**22.8 Holding Over.** The holding over or failure to vacate the Kitchen Facilities at the expiration of this Agreement shall create a month-to-month tenancy under the terms and conditions of this Agreement which may be terminated by either party upon thirty (30) days prior written notice to the other party.

**22.9 Center Director.** Until otherwise directed by notice to Contractor from the City

Manager, the Center’s Director shall be the authorized representative of the City and in all respects shall have the powers, duties, and rights hereunder, acting in his or her capacity as Center Director.

**22.10 Interpretation/Jurisdiction.** This Agreement shall be deemed to have been entered into in Lane County, Oregon. Jurisdiction of any dispute shall be in the Circuit Courts of the State of Oregon, and venue shall be in Lane County, Oregon. Interpretation of this Agreement shall be governed by the laws of the State of Oregon.

**22.11 Survival.** Any obligation of a party that accrues or arises during the term hereof shall survive termination of this Agreement until satisfied by payment or performance.

**CITY OF FLORENCE**  
**(“CITY”)**

**(“Contractor”)**

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

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

Title: City Manager

Title: Owner

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

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