



M E M O R A N D U M

**City of Austin
Financial Services Department
Purchasing Office**

DATE: 02/24/2017
TO: Memo to File
FROM: Claudia Rodriquez, Senior Buyer
RE: MA NR170000009

This Master Agreement Contract was created and administered by Austin Convention Center. All original documents are located with the department. The Purchasing Office is not responsible for any procurement action for this Master Agreement Contract other the creation of the payment mechanism for accounting purposes.

MANAGED CONCESSION AGREEMENT

This Managed Concession Agreement is made by and between the City of Austin, a Texas home-rule municipality (City), Levy Premium Foodservice, LLC, (Levy), a Texas limited liability company, and PRIME THYME RESTAURANT GROUP, LLC (Concessionaire), a limited liability partnership having offices at 3502 Sacred Moon Cove, Austin, TX 78746.

The City has a Catering and Concession Services Agreement with Levy to operate and manage the concessions and all food and beverage services at Austin Convention Center and Palmer Events Center (together, the "Center").

The Concession Services Agreement provides in part that Levy shall, on behalf of the City and subject to the City's written approval which may be withheld at the City's discretion, solicit, select, and manage the performance of concessionaires that provide services at the Center.

The Concessionaire wishes to provide certain goods and services at the Center.

The City, Levy, and Concessionaire therefore hereby agree as follows:

ARTICLE 1: CONCESSIONAIRE RIGHTS AND RESPONSIBILITIES

1.1 Grant of Concession and Catering Rights. Concessionaire shall perform all of its obligations under this agreement in a manner that is consistent with the City's goal of providing superior customer service for the public. If the City, or Levy, on behalf of the City, notifies Concessionaire of any unacceptable levels of service or practices, Concessionaire shall immediately remedy those service deficiencies.

1.2 Term. Concessionaire's concession and catering rights as provided for under this agreement shall begin on March 1, 2017 and terminate on February 28, 2018. The Contract will be in effect for an initial term of twelve (12) months and may be extended in writing thereafter for up to two (2) twelve (12) month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee.

1.3 Sale of Products; Concession Locations. The City grants to Concessionaire the right to conduct the sale of only those of Concessionaire's products identified on Exhibit A to this agreement. The products shall be of the price, packaging and size specified in Exhibit A. Levy, on behalf of the City, and Concessionaire may amend in writing Exhibit A during the term of this agreement. Concessionaire may not sell or provide for free or for charge any food, beverage, or other item or merchandise other than the products. The City has authorized Levy, in consultation with and subject to the ultimate approval of the City, to designate the locations from which the Concessionaire may sell the products (Concession Locations). Levy shall inform Concessionaire of Concession Locations and Concessionaire may sell products only from those Concession Locations. Concessionaire shall locate and re-locate to different Concession Locations as directed by the City or by Levy.

1.4 **Equipment; Signage.** Concessionaire shall provide, at its own cost, all equipment, serving pieces, utensils, storage containers, point of sale terminals, and all other supplies and equipment necessary for Concessionaire's sale of the products. The style, size, form, content, materials and location of all signs and advertising used by Concessionaire at the Center shall be subject to Levy's prior written approval.

1.5 **Oversight of Concessionaire's Activities.** Any and all approvals made by Levy to Concessionaire under this agreement shall be made on behalf of the City and are subject to the City's ultimate discretion. Levy, on behalf of the City, shall administer this agreement with respect to the oversight of Concessionaire's day-to-day performance under this agreement.

ARTICLE 2: EQUIPMENT, SUPPLIES; COMPLIANCE WITH LAWS

2.1 Concessionaire shall be solely responsible for the maintenance and repair of all equipment, supplies, vehicles and improvements, if any, in the Concession Locations used by Concessionaire. Concessionaire shall be responsible for compliance with all Federal, State and local safety and health laws and regulations with respect to its operations. Concessionaire shall, at its expense, obtain all permits and licenses required for the conduct of its operations. Concessionaire agrees to comply, at Concessionaire's own expense, with the provisions of all city, local, state, and federal laws, statutes, codes, ordinances, regulations and other requirements that are applicable to Concessionaire and its employees performance of services under the Agreement. Concessionaire's employees shall at all times while operating a Concession Location at the Center pursuant to this Agreement comply with all applicable federal, state, and local laws, regulations, ordinances, and City and Levy policies. Concessionaire shall, at its sole expense, be responsible for complying with all menu labeling requirements applicable to the Concession Locations.

2.2 Concessionaire shall assure that all facilities and equipment are used in an appropriate manner consistent with industry standards and compliant with the Department of Health, City of Austin Health Department, or any other applicable entities or regulations.

ARTICLE 3: CLEANING RESPONSIBILITIES

Concessionaire shall be responsible for maintaining a high standard of service, hygiene, cleanliness and sanitation in each of the Concession Locations and the surrounding areas within a twenty-five (25) foot radius from each Concession Location. Concessionaire shall be responsible for trash and garbage removal to a designated point of central pickup. Levy utilizes a third party agent to monitor sanitation and cleanliness within the Center and has the right to inspect all Concession Locations and to close down operations they deem unsanitary or in violation of basic food handling requirements.

ARTICLE 4: INVENTORY

Concessionaire shall be responsible for maintaining sufficient inventory of the products to meet anticipated demand for the products. Concessionaire shall be solely responsible for ordering and transporting the products to and from the Concession Locations.

ARTICLE 5: SECURITY; INDEPENDENT CONCESSIONAIRE; PERSONNEL

5.1 Security. Concessionaire is solely responsible for security for its fixtures, furnishings, equipment inventory and other personal property located in the Designated Areas.

5.1.1 Security for Designated Areas. Except as specifically set forth in this Article 5.1 of this agreement, Concessionaire is solely responsible for ensuring the security of all Concession Locations that Concessionaire uses. Concessionaire shall not alter, make any additions to, or interfere with any security system, electronic alarm system, fire system, or video system without prior consultation and written approval of the City. Concessionaire will not install or alter any physical doorways, rooms, or other areas of ingress and egress that would in any way limit the City's access.

5.1.2 Security staffing in support of any event is the exclusive authority and responsibility of the City. Concessionaire will not hire any security staff, without prior consultation and written approval of the City.

5.1.3 Access to the Center. Concessionaire shall exercise extreme caution and care with respect to the handling and use of access to the Center and access control devices provided by the City for entry to the Center. Concessionaire will immediately report any lost or missing control devices (including access cards, identification cards, temporary passes) to the City and will pay the City such fees and charges as are requested by the City for replacement of lost or destroyed control devices. Concessionaire shall be responsible for turning off all appropriate equipment and lights and locking all appropriate doors at the close of operations within the Center.

5.1.4 Security Policy. Concessionaire shall require its personnel to comply with the City's security policies. Concessionaire shall furnish a list of the names of Concessionaire's Personnel and Concessionaire's Employees and provide updates to said list of names to Levy monthly as changes occur.

5.1.5 Workforce Security Clearance and Identification

5.1.5.1 Concessionaire acknowledges that its personnel will be interacting with the public, including from time to time, children, persons with disabilities, and the elderly, and that some of its employees will be responsible for handling cash transactions. Concessionaire warrants that it will take all reasonable steps to verify that its employees do not pose any unreasonable security risks with respect to the routine cash transactions involved in the operations of the Center and with the City's customer service goals.

5.1.5.2 Concessionaire, at its sole expense, shall obtain a certified criminal background report for each member of its personnel that works at the Center. The report may be obtained by reporting to one of the below governmental entities, submitting to fingerprinting and requesting the report (requestors may anticipate a

two-week delay for State reports and up to a four to six week delay for receipt of a Federal report):

5.1.5.2.1 Texas Department of Public Safety for any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card.

5.1.5.2.2 The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card;

5.1.5.2.3 A Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.

5.1.5.3 Concessionaire shall obtain the reports for the employees prior to any onsite work commencement. Concessionaire shall not be required to provide actual background results with such reports for such Concessionaire's Personnel.

5.1.5.4 Concessionaire shall provide Levy a Criminal Background Report affirming that Concessionaire has conducted required security screening of Concessionaire's personnel to determine those appropriate for execution of the work and for presence on the City's property, provided that Concessionaire shall not be required to provide actual background results with such reports for such Concessionaire's Personnel. A list of all Concessionaire Personnel requiring access to the City's site shall be attached to the report.

5.1.5.5 Concessionaire shall provide the report described in Section 5.1.5.4 above with the list of the Concessionaire's Personnel, to the City (through the Center's Security Offices). The City will provide each of Concessionaire's Personnel a Concessionaire ID badge that is required for access to City property that shall be worn at all times by Concessionaire's Personnel during the execution of the work.

5.1.5.6 The Concessionaire shall retain the reports for 3 years and make them available for audit by the City during regular business hours. Notwithstanding any provision to the contrary in this Article, it is understood and agreed that Concessionaire shall only be required to provide evidence (as opposed to actual background results) that it has performed the required background checks to the City for compliance with the requirements set forth in this Article 5.

5.1.5.7 The City reserves the right to deny an ID badge to any Concessionaire Personnel for reasonable cause, including failure of a Criminal Background Check. Levy will notify the Concessionaire of any such denial no more than ten (10) days after receipt of the Concessionaire's reports. Where denial of access by a particular person may cause the Concessionaire to be

unable to perform any portion of the work of the Agreement, the Concessionaire shall so notify the City's Contract Manager, in writing, within five (5) calendar days of the receipt of notification of denial.

5.1.5.8 Concessionaire's Personnel will be required to wear the ID badge at all times while on the work site. Failure to wear or produce the ID badge may be cause for removal of an individual from the work site, without regard to Concessionaire's schedule. Lost ID badges shall be reported to the Levy (via the Center's Security Offices). Concessionaire shall reimburse the City for all costs incurred in providing additional ID badges to Concessionaire Personnel.

5.1.5.9 ID badges to enter and/or work on the City property may be revoked by the City at any time. ID badges must be returned to the City at the time of project completion and acceptance or upon removal of an individual from the work site.

5.1.5.10 Concessionaire is not required to obtain Criminal Background Check reports for delivery personnel, including but not limited to FedEx, UPS, Roadway, or other materials delivery persons, however all delivery personnel must present company/employer-issued photo ID and be accompanied by at least one of Concessionaire's Personnel at all times while at the work site. The City reserves the right to deny entrance to anyone whose identification card or control device is determined to be under restriction or invalid.

5.2 Independent Concessionaires. Concessionaire shall be an independent contractor of Levy. Concessionaire shall indemnify the City, its officials and employees, and Levy and its respective shareholders, officers, directors, partners, members, employees, agents and representatives, against any and all liability which may be asserted against them in connection with this Agreement and Concessionaire's performance hereunder.

5.3 Personnel. Concessionaire shall comply with all federal, state and wage and hour law requirements and obligations. Concessionaire shall be solely responsible for the following: (i) paying Concessionaire's employees at least the applicable living wage for all hours worked; (ii) paying Concessionaire's employees required premiums for overtime hours, spread of hours, and split shifts where required; (iii) paying Concessionaire's employees within the time period required by applicable law; (iv) providing Concessionaire's employees with meal and rest breaks as required by applicable law; (v) withholding all applicable taxes for Concessionaire's employees; (vi) providing unemployment and workers' compensation coverage for Concessionaire's employees; (vii) keeping all required recordkeeping documents pertaining to Concessionaire's employees; and (viii) properly completing all appropriate paperwork for the employment of such individuals, including, but not limited to, the I-9 form and applicable tax forms; and (ix) ensuring that no improper deductions are taken from the wages from Concessionaire's employees.

5.3.1 Concessionaire will maintain a staff of its employees on duty at the Concession Locations at a level and in a manner consistent with the operating standards

required by Levy and the City. Neither Concessionaire nor its employees are Levy or City employees. Neither Concessionaire nor its employees shall represent directly or indirectly that they are employees, agents, or legal representatives of Levy or the City. Concessionaire agrees its employees shall not be considered Levy or City employees under any circumstances, including, but not limited to, under the Fair Labor Standards Act of 1938, the Equal Pay Act of 1963, Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1866, the Age Discrimination in Employment Act of 1967, the Americans with Disabilities Act of 1990, the Family and Medical Leave Act of 1993, the Employee Retirement Income Security Act of 1974 and the Worker Adjustment and Retraining Notification Act, or any other city, local, state or federal laws, statutes, codes, ordinances, regulations or constitutions or common law. Although Concessionaire's employees are not Levy or City employees, all applicable policies and procedures set by Levy and the City must be communicated by Concessionaire to its employees and must be strictly followed. Concessionaire and its management, supervisors and employees must behave in a professional manner at all times while in or around the Center. Levy's and the City's rules with regard to employee ingress and egress and parking must be strictly followed. No alcoholic beverages, drugs, obscene or vulgar language or disruptive behavior is permitted anywhere in the Center including the parking lot. No smoking, eating or gum chewing is permitted in the Concession Locations or in the Center. The Concessionaire, its employees, subConcessionaires, and subConcessionaire's employees may not while on the City's premises use or possess a firearm, including a concealed handgun that is licensed under state law and use or possess alcoholic or other intoxicating beverages, illegal drugs, or controlled substances, nor may such workers be intoxicated or under the influence of alcohol or drugs, on the job. Levy may ban any Concessionaire's employee(s) from the Center, provided that the decision is based on Levy's established, written policies. Concessionaire hereby agrees that it will inform its employees that they must abide by Levy's policies and procedures. In the event that the Concessionaire's employees fail to follow Levy's policies and procedures, the Concessionaire's employee(s) will be subject to disciplinary action, up to and including permanent removal from the Center.

5.3.2 Staff.

5.3.2.1 Concessionaire shall employ a Manager/Supervisor (also known as Single Point of Contact (SPOC)) to oversee its operations at the Center. Should the City or Levy determine that the SPOC is not satisfactorily performing the duties of the SPOC, subject to compliance with all laws and this Agreement, Concessionaire shall, within thirty (30) days of receipt of written notice of such dissatisfaction, replace the SPOC with one who is satisfactory to the City. The SPOC must have a minimum of two (2) years of consecutive employment in a similar operation with comparable responsibilities. The SPOC must have experience in food and beverage service with particular emphasis upon effective marketing techniques. The SPOC must have a high degree of management expertise, as evidenced by prior food and beverage service management, high quality food production and service, and effective financial controls. The SPOC shall coordinate all Catering and Concession Services with subConcessionaires,

vendors, and/or Concessionaire's Personnel. The SPOC shall be responsible for all Catering and Concession Services provided by the Concessionaire and shall seek to avoid any disruption in service to Users of the Center.

5.3.2.2 Additional Concessionaire Personnel Obligations. Concessionaire shall:

5.3.2.2.1 require that the SPOC or his designee be on the Center premises during all operating hours.

5.3.2.2.2 recruit, employ, and train all employees necessary for the successful operation of Concessions and Catering Services; training of the employees must include safety training and dealing with customer complaints, or any other training appropriate for the job function, including but not limited to cash handling.

5.3.2.2.3 design and prepare specifications for uniforms for Catering and Concession employees to wear at all events, including visible name tag, and obtain the City's written approval of uniform design.

5.3.2.2.4 employ competent and orderly employees who are neat, clean, and professional in appearance, who act in a courteous and competent manner, and who treat all patrons in a respectful manner.

5.3.2.2.5 ensure that its employees, subConcessionaires, and subConcessionaire's employees do not use or possess a firearm on any City premise in accordance with City policy, and State Law, including but not limited to persons holding a State concealed handgun license permit.

5.3.2.2.6 ensure that its employees, subConcessionaires, and subConcessionaire's employees do not use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs on the job.

5.3.3. If any employee of the Concessionaire, or any subConcessionaire or employee of a subConcessionaire is alleged to be incompetent, disorderly, to have violated any applicable City policy or procedure, civil or criminal laws, or is under the influence of alcohol or drugs, Concessionaire shall immediately conduct a due diligence to investigate the allegations. While the due diligence is being conducted Concessionaire shall remove such worker from the Center and from providing services pursuant to this Agreement, and may not employ such worker again at the Center without the Director's prior written consent and documentation from the Concessionaire demonstrating that the allegations are unfounded. The City shall not be liable for Concessionaire's relationship with its employees or subConcessionaires.

5.3.4 Equal Employment Opportunity. Concessionaire or Concessionaire's agent shall not engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code.

5.3.5 Americans With Disabilities Act (ADA) Compliance. Concessionaire, or Concessionaire's agent shall not engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

ARTICLE 6: EVENT; HOURS OF OPERATION

Levy shall determine, on behalf of the City and subject to the City's discretion, the events and the hours at which the products will be sold at the Center. Levy shall submit to the City for approval a schedule showing the events, hours, and products that have been approved for sale.

ARTICLE 7: FINANCIAL ARRANGEMENTS

7.1 Commissions. Levy shall issue Concessionaire a check for commissions equivalent to Sixty percent (60%) of the total product inventory Net Sales, less (A) inventory shortages, which shortages shall be charged at retail prices, and less (B) the cost of inventoried Products issued or sold by Levy and accepted by Concessionaire on net sales (the "Commissions"). "Net Sales" shall mean all receipts received by Concessionaire from sales of the products at the Center, less only retail sales taxes and other direct taxes imposed upon receipts collected from consumers by Concessionaire at the Center.

7.2 Method of Payment. All sums received by Concessionaire from sales of the products, together with cash register tapes substantiating such sales, will be delivered to Levy on the same day as received. A settlement sheet will be completed immediately following each event indicating Net Sales and the sales amount due to Concessionaire. Both Levy and Concessionaire will sign the settlement sheet. Levy shall pay, to the appropriate taxing authority, all retail sales taxes and other direct taxes imposed upon receipts collected from consumers or imposed on the Commissions. Levy shall withhold from Concessionaire the amount of any cash shortage determined to have occurred in the course of Concessionaire's operations. Levy will make Commission payments to Concessionaire within 20 days of the event date. Levy will deposit the remaining funds into the City's Catering & Concessions account.

7.3 Accounting and Control Procedures.

7.3.1 To ensure that all sums received by Concessionaire are delivered to Levy as required under this Agreement, Concessionaire shall utilize in its operations at the Center such cash and inventory controls as are required by Levy or the City and any such other procedures established by Levy or the City from time-to-time. Concessionaire shall maintain accurate books and records in connection with its operations hereunder and shall maintain such records for a period of at least three (3) years, which books and records shall be available for Levy's or City's inspection during regular business hours.

7.3.2 Concessionaire is responsible for full payment of all shortages as determined by physical inventory, cash register readings, cash receipts, spot audits, shopping service or any combination of the above or other control measures. If Levy identifies any discrepancies, then Levy will report the discrepancy to the City. The City's decision will be final and binding.

7.3.3 Levy shall inventory all products supplied by Concessionaire to assist in accurately determining the gross revenue earned by Concessionaire. Levy must verify all opening and closing inventory levels for each Concession Location, including all storage locations, on a daily basis with no exceptions permitted. Concessionaire must supply enough product to maximize revenue and Net Sales for each event. Concessionaire is responsible for maintaining a secure and sanitary storage location, if necessary.

7.3.4 Once inventory levels have been counted and agreed upon by Levy and Concessionaire, Concessionaire shall not add inventory to its stock, without Levy's prior written permission. All deliveries and transfers of product must be verified in writing by Levy prior to delivery to each Concession Location.

7.3.5 Inventory and control procedures are maintained by packaging and/or item counts. Packaging must be consistent with this process and allow inventory counts of packaging or product.

ARTICLE 8: REIMBURSEMENT OF ADDITIONAL SUMS

8.1 If Levy has paid any sums or has incurred any expense for which Concessionaire agreed to pay or reimburse the City, or if the City is required to pay any sums or incurs any expense arising from this Agreement or arising from the failure or neglect of Concessionaire to perform or fulfill any of the terms or conditions of this Agreement, such amounts shall be deemed additional payments due hereunder; and Concessionaire shall reimburse the City for, or Levy may retain, the amount(s) thereof within ten (10) days following such demand(s).

8.2 Right To Audit. The Concessionaire agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Concessionaire related to the performance under this Contract. The Concessionaire shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Concessionaire are resolved, whichever is longer. The Concessionaire agrees to refund to the City any overpayments disclosed by any such audit.

ARTICLE 9: INSURANCE; INDEMNIFICATION

9.1 **Insurance**: The following insurance requirements apply.

9.1.1 **General Requirements**.

9.1.2 The Concessionaire shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

9.1.3 Concessionaire shall provide a Certificate of Insurance as verification of coverages required below to the City and Levy at the below addresses prior to Contract execution and within fourteen (14) calendar days after written request from the City.

9.1.4 The Concessionaire must also forward a Certificate of Insurance to the City and Levy whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

9.1.5 The Concessionaire shall not commence work until the required insurance is obtained and has been reviewed by City and Levy. Approval of insurance by the City and Levy shall not relieve or decrease the liability of the Concessionaire hereunder and shall not be construed to be a limitation of liability on the part of the Concessionaire.

9.1.6 The City and Levy may request that the Concessionaire submit certificates of insurance to the City and Levy for all subConcessionaires prior to the subConcessionaires commencing work on the project.

9.1.7 The Concessionaire's and all subConcessionaires' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

9.1.8 All endorsements naming the City and Levy as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following addresses:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

Levy Restaurants at Austin Convention Center
Director of Operations
500 E. Cesar Chavez Street
Austin, TX 78701

9.1.1.8 The "other" insurance clause shall not apply to the City and Levy where the City and Levy is an additional insured shown on any policy. It is intended that policies required in the Contract, covering the City, Levy and the Concessionaire, shall be considered primary coverage as applicable.

9.1.1.9 If insurance policies are not written for amounts specified in Paragraph 9.1.2, Specific Coverage Requirements, the Concessionaire shall carry

Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

9.1.1.10 The City and Levy shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

9.1.1.11 The City and Levy reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City and Levy based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Concessionaire.

9.1.1.12 The Concessionaire shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

9.1.1.13 The Concessionaire shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

9.1.1.14 The Concessionaire shall provide the City and Levy thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

9.1 **Specific Coverage Requirements.** The Concessionaire shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Concessionaire.

9.2 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

9.2.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

9.2.2 Concessionaire/Subcontracted Work.

9.2.3 Products/Completed Operations Liability for the duration of the warranty period.

9.2.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.2.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.2.6 The City of Austin and Levy Premium Foodservice, LLC listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

9.3 **Business Automobile Liability Insurance.** The Concessionaire shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

9.3.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.3.2 Thirty (30) calendar days' Notice of Cancellation, Endorsement CA0244, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.3.3 The City of Austin and Levy Premium Foodservice, LLC listed as an additional insured, Endorsement CA2048, or equivalent coverage.

9.4 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

9.4.1 The Concessionaire's policy shall apply to the State of Texas.

9.4.2 Waiver of Subrogation, Form WC420304, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.4.3 Thirty (30) calendar days' Notice of Cancellation, Form WC420601, or equivalent coverage in favor of The City of Austin and Levy Premium Foodservice, LLC.

9.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's and Levy's review and approval.

9.6 Indemnity.

9.6.1 Definitions:

9.6.2 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

9.6.2.1 damage to or loss of the property of any person (including, but not limited to the City, the Concessionaire, their respective agents, officers, employees and subConcessionaires; the officers, agents, and employees of such subConcessionaires; and third parties); and/or;

9.6.2.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Concessionaire, the Concessionaire's subConcessionaires, and third parties),

9.6.2.3 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

9.6.3 THE CONCESSIONAIRE SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, LEVY, AND EACH OF THEIR RESPECTIVE SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONCESSIONAIRE, OR THE CONCESSIONAIRE'S AGENTS, EMPLOYEES OR SUBCONCESSIONAIRES, IN THE PERFORMANCE OF THE CONCESSIONAIRE'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHT OF THE CITY, LEVY, OR THE CONCESSIONAIRE (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

The Concessionaire, as the sole or majority owner of the Concession (the "Owner") personally guarantees this indemnification provision and any and all payments to be made pursuant to it as fully set forth on the signature page below.

ARTICLE 10: APPLICABILITY OF CONCESSION SERVICES AGREEMENT

That Catering and Concessions Services Agreement between Levy and the City (Exhibit C) except as expressly modified by the terms and conditions set forth in this Agreement, shall apply to the City and Concessionaire such that: (i) Concessionaire hereby agrees to comply with all of Levy's requirements and will conform its operation and management of the Concession Locations to said requirements; (ii) Concessionaire shall have no rights in the Catering and

Concessions Services Agreement , such document being incorporated herein solely for the purpose of establishing the respective obligations of Concessionaire and Levy with respect to the operation and management of the Concession. hereunder; and (iii) in the event the Catering and Concessions Services Agreement is terminated or expires, the Term of this Agreement shall similarly terminate or expire upon the effective date thereof, without any liability on the part of Levy or the City, even if any such termination was alleged to have been the result of Levy's performance thereunder.

ARTICLE 11: TERMINATION

Early Termination. The City may, in its sole discretion, terminate this Agreement prior to the expiration of the Term by giving thirty (30) days' advance written notice to Concessionaire. The City may terminate this Agreement for no reason or any reason, which may include, but shall not be limited to, selling of unauthorized items, incorrect prices being charged, refilling of chargeable inventoried Products, Products being sold without their agreed upon chargeable inventoried item, selling from unauthorized locations, failure to record up sales in register, delivering Product to Concession Locations without Levy's verification, inadequate staffing levels, poor customer service, unacceptable behavior of staff, lack of clean uniforms, poor hygiene, cleanliness and sanitation, failure to provide or maintain attractive and functional equipment, poor product handling, failure to serve and/or store all Products at the appropriate temperature, general customer or Client dissatisfaction, failure to comply with Levy and/or Center rules and regulations, Center requirements and the overall Product quality and service provided. Concessionaire shall permit Levy to monitor the quality and control level of services provided by Concessionaire. If Levy determines that any aspect of Concessionaire's services do not meet required quality or service standards, Levy may recommend to the City termination of this Agreement.

ARTICLE 12: ASSIGNMENT

This Agreement shall not be assigned by Concessionaire without the written consent of the City, which consent may be withheld in the City's sole discretion.

ARTICLE 13: NO GUARANTEES

No Guarantees. Concessionaire acknowledges that Levy or the City have not made any guarantees with respect to the number of events or the level of revenue or profitability of the events at which Concessionaire shall provide its services. In no event shall Levy or the City have any liability to Concessionaire for the cancellation of any event at the Center.

ARTICLE 14: PLACE AND CONDITION OF WORK

14.1 The City shall provide the Concessionaire access to the sites where the Concessionaire is to perform the services as required in order for the Concessionaire to perform the services in a timely and efficient manner in accordance with and subject to the applicable security laws, rules, and regulations. The Concessionaire acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and

essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Concessionaire's obligations under the Contract. **The Concessionaire hereby releases and holds the City and Levy harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.**

14.2 **Emergencies.** In the event of fire, disturbance, actual or threat of violence, or any other emergency, Concessionaire will immediately notify the proper public safety authority or emergency service. Additionally, Concessionaire shall immediately notify Levy of such emergency by calling the Center's 24 hour security dispatcher at the number supplied by the City. Concessionaire shall ensure that all Concessionaire's Personnel are trained to respond to fire, civil defense, bomb threats, evacuations, and other emergencies based on procedures established by City. If Concessionaire becomes aware of any condition in the Catering and Concession Service facilities that is unsafe or unhealthy, Concessionaire shall immediately notify Levy in writing. Concessionaire shall also advise City, in writing, of whatever action Concessionaire has taken to remedy any safety hazard. Concessionaire, Concessionaire's Personnel, Concessionaire's agents or subConcessionaires agree to abide by and practice all state and local safety standards and regulations. Concessionaire shall take all reasonably necessary and proper precautions to protect the safety of Concessionaire's Personnel and other persons and to protect all property from any damages from whatever cause.

14.3 **Fire Damage.** Concessionaire shall give City prompt notice followed by formal written notice of any fire damage occurring to the Center and a copy of all notices received by Concessionaire of any claim for bodily injury occurring at the Center.

ARTICLE 15: COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS AND STOP WORK NOTICE

15.1 **Compliance with Health, Safety, and Environmental Regulations.** The Concessionaire, its SubConcessionaires, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **The Concessionaire shall indemnify and hold the City and Levy harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Concessionaire's obligations under this paragraph.**

15.2 **Stop Work Notice.** Levy may issue an immediate Stop Work Notice in the event the Concessionaire is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Concessionaire will cease all work until notified by Levy that the violation or unsafe condition has been corrected. The Concessionaire shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

ARTICLE 16: DISPUTE RESOLUTION

16.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

16.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Concessionaire agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Concessionaire will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

16.3 Notwithstanding anything in this Agreement to the contrary, Concessionaire shall not be entitled to seek, claim or collect damages in excess of the actual and direct damages actually incurred or sustained as a result of a breach or violation of this Agreement. Accordingly, Concessionaire hereby expressly waives any right to seek, claim or collect any punitive, indirect, special, speculative or consequential damages in connection with, or related to, a breach or violation of this or any other agreement entered into between the parties (or their respective affiliated or related entities) to this Agreement.

ARTICLE 17: NON-SUSPENSION OR DEBARMENT CERTIFICATION

17.1 The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

ARTICLE 18: ENTIRE AGREEMENT

This Agreement represents the entire agreement between the City and Concessionaire. The terms and conditions of this Agreement supersede all prior negotiations, representations, or agreements, either written or oral. Business conditions may occasionally dictate modifications to the specific terms of this Agreement; however, no changes shall be binding on the parties unless reduced to writing and signed by the City and Concessionaire.

ARTICLE 19: GOVERNING LAW AND FORUM

Jurisdiction And Venue. The Contract is made under and shall be governed by the laws of the State of Texas. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

LEVY

By: [Signature]
Signature

Name: Katharine Penan
Printed Name

Title: bm/PDO

Date: 2/20/17

CITY

By: [Signature]
Signature

Name: Liz Lock
Printed Name

Title: BUYER II

Date: 2/21/17

CONTRACTOR'S NAME

By: [Signature]
Signature

Name: Emily Hines
Printed Name

Title: Director of Public Affairs Manager

Date: Feb 20, 2017

The undersigned, who is the "Owner", hereby agrees to be jointly and severally liable for, and guaranties the payment (and not merely the collection) of, all liabilities and obligations of Concessionaire under this Agreement, including but not limited to Sections 5.2 and 9.6. The Owner waives all defenses based on the law of suretyship or otherwise and all defenses that Concessionaire could assert arising from any insolvency, bankruptcy or lack of legal capacity of Concessionaire.

WITNESS:

By: [Signature]
Signature

Name: Brihney Gilbert
Printed Name

Title: DO - Levy

Date: 2/20/17

OWNER:

By: [Signature]
Signature

Name: Emilia Hines
Printed Name

Title: Director of Public Affairs

Date: Feb 20, 2017

Exhibits

Exhibit A – Concessionaire's Products

Exhibit B – Non-Discrimination Certification

Exhibit C – Catering and Concession Agreement between Levy and the City of Austin

EXHIBIT A

LEVY RESTAURANTS PARTNER STAND SHEET

INVOICE #

6140301

Standalone?

BUSINESS NAME:

Prime Thyme - Might Cone

EVENT DATE:

EVENT NAME/LOCATION:

RESTAURANT REP:

SxSw

Not yet known

YES

ITEM	SOLD	Gratis	Retail Price	Extend	Product Cost	Extend Cost	Gratis Cost
Chips			\$3.25	\$0.00	\$ 0.43	0.00	0.00
Bottle Soda			\$4.00	\$0.00	\$ 0.89	0.00	0.00
Water Bottle			\$4.00	\$0.00	\$ 0.35	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
				\$0.00	\$ -	0.00	0.00
Avocado Cone			\$10.00	\$10.00	0.00	0.00	
Shrimp-Avocado Cone			\$12.00	\$12.00	0.00	0.00	
Chicken-Avocado Cone			\$11.00	\$11.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00	0.00	0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
				\$0.00		0.00	
			\$0.00	\$0.00		0.00	

0.00 0.00

<= Product cost unknown until Pepsi invoicing received, current COKE pricing used

<= Product cost unknown until Pepsi invoicing received, current COKE pricing used

Netvupoint Entry for Cash Below

POS Sold	Dollars
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
	\$ -
X	\$0.00

\$ -

70/30 Items	\$0.00
	\$0.00
Total	\$0.00

N/A Bev	\$0.00
Food	\$0.00
Total	\$0.00

TOTAL SALES: \$0.00
 SALES TAX \$0.00
 ADJ GROSS SALES \$0.00

LEVY FEE:	\$0.00	Account
Snappy Snacks Share	\$0.00	4150
Concession Beverage:	\$0.00	5010
Concession Food:	\$0.00	5005
Charge Card Fees:	\$0.00	6550

Credit Cards:
 Cash Turned In: \$ -
 Over/Short: \$0.00

Prime Thyme - Might Cone SI	\$0.00
Total Cost	\$0.00

EXHIBIT B

City of Austin, Texas

EQUAL EMPLOYMENT/FAIR HOUSING OFFICE

NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas

Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Concessionaires.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Concessionaire will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Concessionaires in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the

purpose of the provisions against discriminatory employment practices are being carried out.

- (7) To require compliance with provisions of this chapter by all subConcessionaires having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Concessionaire adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin

Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Concessionaire will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Concessionaire will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Concessionaire agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Concessionaire has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Concessionaire's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Concessionaire's policy, but will also supersede the Concessionaire's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONCESSIONAIRE SHALL PROVIDE A COPY TO THE CITY OF THE CONCESSIONAIRE'S NON-DISCRIMINATION POLICY ON COMPANY

LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONCESSIONAIRE FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONCESSIONAIRE'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Concessionaire agrees that this Section 0800 Non-Discrimination Certificate or the Concessionaire's separate conforming policy, which the Concessionaire has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Concessionaire further agrees that, in consideration of the receipt of continued Contract payments, the Concessionaire's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 20 day of Feb, 2017

CONCESSIONAIRE

Authorized Signature

Title



Director of Public Affairs

Exhibit C- Catering and Concession Services Agreement between City of Austin and Levy Premium Food Service, L.L.C.