



Item No. 8g_attach

Meeting Date: April 13, 2021

August 25, 2016

Mrs. Amy Hatcher
Mr. John Hatcher
Café Pacific Catering, Inc. dba
Café Pacific Catering
4402 Auburn Way N
Auburn, WA 98002-0477

Re: Agreement S-00318752, Conference Center Concession and Catering
Contract

Dear Mr. and Mrs. Hatcher,

Enclosed is your copy of the Agreement for the Conference Center Concession and Catering Contract which has been executed by David K. Soike, Acting CEO on August 25, 2016 on behalf of the Port. Please reference the Agreement number when invoicing the Port for the services. We look forward to working with your company.

If you have any questions or concerns, please do not hesitate to give me a call.

Regards,

Patty Etzkorn

Patty Etzkorn, C.P.M., A.P.P.
Port of Seattle
Central Procurement Office - Purchasing
P-Card Administrator
P O Box 1209
Seattle, WA 98121

Encl. - Agreement - executed
Cc: - Olivia Sloan, Aviation Conference Center Business & Marketing
Manager w/copy encl.

PORT OF SEATTLE
SEATTLE-TACOMA INTERNATIONAL AIRPORT
AGREEMENT FOR
CONFERENCE CENTER CONCESSION AND CATERING CONTRACT
Contract No. S-00318752

THIS AGREEMENT (hereinafter referred to as "Agreement") made as of the 25 day of August, 2016, by and between the PORT OF SEATTLE, a Washington municipal corporation as Lessor, (hereinafter referred to as "the Port"), and CAFÉ PACIFIC CATERING, INC. DBA CAFÉ PACIFIC CATERING (hereinafter referred to as "Vendor").

This Agreement is issued pursuant to RFP 16-02, Seattle-Tacoma International Airport Concession/Catering Services.

WITNESSETH

WHEREAS, the Port is owner and operator of Seattle-Tacoma International Airport, and as part of the Airport, operates a Conference Center consisting of over 8,000 square feet of rooms; and

WHEREAS, the Port wishes to secure a single Vendor to service the catering and food service needs for the Port's conference center and Airport Office Building conference rooms; and

WHEREAS, Vendor is interested in operating, and has been selected to operate, this catering concession and contract for the Port;

NOW, THEREFORE, in consideration of their mutual promises, the parties hereto do hereby mutually agree as follows:

1. DEFINITIONS

For purposes of this Agreement, the following terms have the meanings below. Defined terms shall be applicable to both the singular and plural forms thereof:

Agreement Year: Shall mean each successive year during the term of this Agreement, beginning with the first day of the first full month on or after the Commencement Date.

Airport: Shall mean the Seattle-Tacoma International Airport.

Airport Office Building: Shall mean and refer to the office building located at the southern end of the Airport terminal building above Concourse A primarily housing the Port's administrative offices for the Airport. For purposes of this Agreement, the Airport Office Building consists only of the Mezzanine, 1st, 2nd, 3rd, 4th and 5th floors of the building and specifically excludes any levels below the Mezzanine level.

AOB Conference Rooms: Shall mean and refer to those conference rooms, approximately twenty (20) in number, located on the first through fifth floors of the Airport Office Building. This does not include conference rooms on the mezzanine levels.

Brown Bag: shall mean and refer to an event when a user determines that the attendees will be responsible for their own meal(s), provided at their own expense and is usually a lunch that is brought from home, or is available for purchase within the Airport or nearby.

Commencement Date: shall mean October 1, 2016 or, if later, the date on which this Agreement is fully executed by the parties. The selected vendor may begin accepting orders prior to October 1, 2016, for events happening on or after October 1, 2016.

Concession: Shall mean the concession rights granted to Vendor pursuant to Section 5 of this Agreement

Conference Center: Shall mean the Airport's Conference Center, as defined by the Port from time-to-time. The Conference Center currently consists of approximately 4,300 square feet of meeting space in the main center area, with adjacent lobby areas and mezzanine hallway. There are additional conference center rooms located outside of the main center, with a combined approximate square footage of 3,800 square feet.

Day: The term day shall mean a calendar day unless otherwise specifically designated.

Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprises (ACDBE): Shall mean, a business, whether it is a corporation, sole proprietorship, partnership or joint venture certified as a DBE or ACDBE by the State of Washington, of which at least fifty-one percent (51%) of the interest is owned and controlled by one or more socially and economically disadvantaged individuals as defined in the Airport and Airways Safety and Capacity Expansion Act of 1987 and the regulations promulgated pursuant hereto at 49 CFR Parts 23 and 26.

Dollars: Currency of the United States.

Electronic Transmission: Electronic mail, or other means of electronic transmission available to the Port to transmit documents or communications.

Goods & Services: Means all things, including specially manufactured Goods that are tangible or movable at the time of identification. The term does not include money in which the price is to be paid, the subject matter of foreign exchange transactions, documents, letter-of-credit rights, instruments, investment property, accounts, chattel paper, deposit accounts, or general intangibles. Goods & Services shall also mean and specifically includes the furnishing of all management, superintendence, labor, materials, equipment, and all component parts thereof, transportation and other facilities or services, and incidentals necessary to the successful completion of the Goods, whether they are temporary or permanent, and whether they are incorporated into the finished Goods or not. Goods also include all other obligations imposed on the Vendor by the Agreement.

Gross Receipts: shall mean the aggregate gross amount of revenue derived from all sales of food and beverage (including fees and alcohol) by Vendor or any persons, firms or corporations on its behalf, from, in or upon the Premises, including orders accepted by means of electronic, telephonic, video, computer or other technology based systems whether from sources other than the Premises, and whether wholesale or retail, and whether cash or credit, including the amount of all consideration other than money received for any of the foregoing including, specifically, but not limited to, the amount of credit allowed for any trade-ins. No deduction shall be permitted for credit card discounts or thefts, and for

uncollected or uncollectible credit or charge accounts. Any deposit not refunded shall be included in Gross Receipts. Each installment or credit sale shall be treated as a sale for the full price in the month during which such sale is made, regardless of the time when Vendor receives payment therefore and without deduction for any fee payable to the credit issuer.

“Gross Receipts” shall not include the following when properly recorded and accounted for:

- Port Sales;
- Tips and gratuities collected by or on behalf of Vendors’ employees and, in fact, paid over to employees;
- Labor and/or staffing fees;
- Service charges identified in the agreed upon menus to cover operating costs, and in some cases tips and gratuities. Service charge does not include additional charges such as rush order fee, delivery charge, or other miscellaneous charges. Those fees and charges are to be included in gross receipts;
- Refunds allowed by Vendor to customers because of unacceptable or unsatisfactory goods or services to the extent such refund was actually granted and adjustment actually made;
- Complimentary meals, any discounts actually granted, and any meals provided by Vendor to its employees without cost as a benefit;
- The amount of any sales tax or other excise tax imposed upon the customer and collected by Vendor as agent for the taxing body imposing the tax and billed to the customer as a separate item; and
- The cost of any item procured from a third-party to fulfill an order or request (e.g. serviceware rentals) that Vendor merely passes-through to its customer (but not any markup thereon).

Legal Requirements: Shall mean and refer to all laws, statutes and ordinances including building codes and zoning regulations and ordinances and the orders, rules, regulations and requirements of all federal, state, county, city or other local jurisdiction departments, agencies, bureaus, offices and other subdivisions thereof, or any official thereof, or of any other governmental, public or quasi-public authority, including the Port, which may be applicable to or have jurisdiction over the Premises.

Percentage Fees: Shall mean the percentage of Vendor’s Gross Receipts on food, beverage and alcohol sales described in Section 7.1

Port Representative: Shall mean the Port employee having primary responsibility for the Port’s airport conference center and AOB conference rooms as designated (from time to time) by the Port in writing. Until changed in writing by the Port, the “Port Representative” shall be the Aviation Conference Center Business & Marketing Manager, Olivia Sloan.

Port Sales: Shall mean all sales of food and beverage made or provided to the Port, whether performed by Vendor or any persons, firms or corporations on its behalf.

Premises: Shall mean the Seattle-Tacoma International Airport and associated nearby properties used for management of the airport, including but not limited to satellite offices.

Schedule of Proposal Prices: That portion of Vendor's Proposal that sets forth the price for which Vendor will perform specific portions of the Goods and, in total, the entire Goods.

Staging Kitchen: Shall mean the staging kitchen within The Conference Center which currently houses a 3-compartment sink, a separate hand-washing station, an ice machine, 2 dishwashers, an industrial stainless steel double-wide refrigerator, counter space, and shelving and cupboards for storage. The Port shall, however, have the right to replace the equipment within the Staging Kitchen from time-to-time so long as it does not fundamentally change the nature of its functionality.

2. TITLES OR HEADINGS

The titles or headings of the sections, divisions, parts, articles, paragraphs, or subparagraphs, of the Agreement are intended only for convenience of reference and shall not be considered as having any bearing on the interpretation of the text.

3. ABBREVIATIONS

Abbreviations may be utilized throughout the Agreement. Any such abbreviation, unless well-known technical, trade meaning commonly understood in the Vendor's industry, will be defined in the particular portion of the Agreement where it is used.

4. REFERENCED STANDARDS & SPECIFICATIONS

Reference to codes, standards and specifications promulgated by local, state and/or federal authorities, professional or technical associations, institutes or societies, are intended to mean the latest edition of each such code, standard or specification adopted and published as of the date of the Agreement, except where otherwise specifically indicated.

5. GRANT OF CONCESSION AND NON-EXCLUSIVE LICENSE

5.1 The Port hereby awards and grants to Vendor, and Vendor hereby accepts, the exclusive right to provide food and beverage service to The Conference Center, except for the exclusions in Section 5.1.1 - 5.1.8. The concession rights and privileges granted and awarded to Vendor are expressly made subject to all of the terms, covenants and conditions of this Agreement.

5.1.1 The Port may provide their own food and beverages in AOB Conference Rooms, floors 1-5. This may include but is not limited to ordering from another caterer, potlucks, Brown-Bag events, or platters from stores (e.g. Safeway or Costco, etc.).

5.1.2 The Port's employees may provide their own food and beverage in The Conference Center. The particular manner in which employees may do so depends on the particular location:

5.1.2.1 For the main Conference Center rooms (Tokyo, Seoul, Amsterdam, London, and Beijing), such permitted use includes Brown-Bag events.

5.1.2.2 For the remaining Conference Center rooms located throughout the airport (currently Summit, Central Auditorium, Heritage), the permitted uses include those listed in 5.1.2.1 and further extend to employee potlucks and platters from stores (e.g. Safeway or Costco, etc.). If any meal will be catered, including drop-off service, the Port shall use the Vendor.

5.1.3 USO Northwest, Port of Seattle Dining & Retail monthly meetings, annual AFS events, and blood drives are permitted to bring in their own food and beverage items.

5.1.4 Port and non-Port users of The Conference Center may provide special event cakes and cupcakes. Such users must notify the Vendor that they intend to bring special event cakes and cupcakes, and written approval is not required. Users must provide their own plates, napkins, flatware, and serving utensils OR request that the Vendor provide these items for a fee.

5.1.5 Port and non-Port users of The Conference Center may also provide specialty items for events (e.g. company logoed cookies; bottles of water for tradeshow, etc.). In these cases, the user must receive written approval from the Vendor a minimum of two (2) business days prior to the event. Users must provide their own plates, napkins, flatware, and serving utensils OR request that the Vendor provide these items for a fee. Business days are defined as Monday-Friday, exclusive of observed holidays. In the event that the user does not receive the required approval by the Vendor within the timeframe stated above, users will notify The Conference Center within two (2) business days in advance of the event. If the user fails to follow the proper notification procedure, the Vendor or Conference Center has the discretion to remove the items or charge for the services required to support the event.

5.1.6 The Port may contract with a third party for the provision of food and beverage when the Port determines, in its sole discretion and in light of the group(s) with which it will be meeting, there are unique ethnic or dietary needs that the Port reasonably believes will best be met by someone other than Vendor. Before contracting with any third party, the Port will consult with Vendor about its ability to provide the items needed. Third party catering under this Section 5.1.6 shall not exceed ten (10) instances in any given calendar year without the prior written consent of Vendor, which shall not be unreasonably withheld, conditioned, or delayed.

5.1.7 The Port may accept or contract for the provision of food and/or beverage from any third party in the event of any emergency or other occurrence materially disrupting normal Airport operations. Without limiting the generality of the foregoing, such permitted use includes, but is not limited to, a snow event, an aircraft incident or material change in applicable security requirement disrupting normal airport operations.

5.1.8 Any Conference Center customer under contract as of the date of this Agreement with the former Vendor for The Conference Center for the provision of catering to a meeting or other event occurring before October 1, 2016. Customer must provide written proof of prior contract with the former Vendor

5.2 The Port and/or The Conference Center may, from time-to-time and on a non-exclusive basis, request Vendor to provide food and beverage service in other, additional areas about the Premises. Port or Conference Center external customer orders on the Premises shall receive the same pricing and discounts as orders in The Conference Center.

5.3 Subject to all of the terms, covenants and conditions contained in this Agreement, the Port hereby grants to Vendor a nonexclusive license to make use of the Staging Kitchen from time-to-time on a non-continuous basis solely in connection with the Concession granted by this Agreement together with a nonexclusive license for access to The Conference Center and AOB Conference Rooms. Vendor is familiar with the physical condition of the Premises and accepts them in their present condition.

6. TERM

6.1 Base Term. Unless earlier terminated pursuant to any provision of this Agreement, the term shall commence on the Commencement Date and continue for three (3) years.

6.2 Option to Extend. The Port shall have the option to extend the term of this Agreement at its sole discretion for up to two (2) additional one (1) year periods, by providing Vendor written notice not less than thirty (30) days prior to the then-current expiration of the term.

7. CONCESSION FEES

7.1 Concession Fees. Vendor shall pay to the Port, for the concession rights and privileges granted herein, a percentage fee equal to twenty-two percent (22%) of Vendor's Gross Receipts on food, beverage and alcohol sales. On or before the fifteenth (15th) day of each month, Vendor shall submit to the Port a detailed statement showing the Gross Receipts generated from the concession during the preceding month and shall simultaneously pay to the Port the Percentage Fee due for that preceding month. The reports shall show such reasonable detail and breakdown as may be required by the Port.

7.2 Discounts. In addition to any Percentage Fee due under Section 7.1, Vendor shall also provide the Port a discount equal to twenty-five percent (25%) off all Port Sales; provided, however, the Port shall not be entitled to any discount on the cost of any items procured from a third-party where the cost of such item (e.g. serviceware rentals) are passed directly through to the Port. The discount shall be off of Vendor's published and approved price list.

5.4 Remittance Address. Vendor shall pay all fees and charges and submit all reports required by this Agreement to the following:

Port of Seattle
Accounts Payable
P.O. Box 1209
Seattle, WA 98124-1209

or to such other address as the Port may from time to time specify in writing to Vendor.

5.5 Late Fees. Vendor hereby acknowledges that late payment by Vendor to the Port of the Percentage Fees or any other sums due hereunder will cause the Port to incur costs not otherwise contemplated by this Agreement. Accordingly, if any installment of Percentage Fees or any other sum due from Vendor shall not be received by the Port within ten (10) days after such amount shall be due, then, without any requirement for notice to Vendor, Vendor shall pay the Port a late charge equal to five percent (5%) of such overdue amount. The parties agree that such late charge represents a fair and reasonable estimate of the costs the Port will incur by reason of late payment by Vendor. Acceptance of such late charge by the Port shall in no event constitute a waiver of Vendor's default with respect to such overdue amount, nor prevent the Port from exercising any of the other rights and remedies granted hereunder. In addition to the late charges provided for in this Section, interest shall accrue on Percentage Fees, or any other sums due hereunder, at the rate of eighteen percent (18%) per annum or the maximum rate provided by law, whichever is less, from the date due until paid.

8. ACCOUNTING PROCEDURES

8.1 Books and Records. Vendor covenants and agrees that it will establish and maintain an accounting system (specifically including all books of account and records customarily used in the type of operation permitted by this Agreement) in full and complete accordance with generally accepted accounting principles and otherwise reasonably satisfactory to the Port for the determination of any Percentage Fees or other computations, or both, which may be necessary or essential in carrying out the terms of this Agreement. Vendor shall maintain its records relating to the operation permitted by this Agreement for a period of at least three (3) years after the end of each Agreement Year (or until the close of any ongoing audit thereof being conducted by, or on behalf of, the Port); provided, however, that the Port may request that any such records be retained for a longer period of time, in which case Vendor, at its option, may deliver such records into the custody of the Port.

8.2 Reporting. In addition to any reports otherwise required, Vendor shall provide the Port (i) within fifteen (15) days after the close of each month of the Term, a report (the "Monthly Report") of Gross Receipts; (ii) within sixty (60) days after the close of each Agreement Year, a report (the "Annual Report"), reflecting the amount of Gross Receipts for the preceding Agreement Year; and (iii) such other and further reports, on such frequency as the Port may reasonably require from time to time, all without any cost to the Port. All such reports shall be provided in writing and/or electronic format as reasonably specified by the Port from time to time. The Annual Report shall be accompanied by a signed certificate of an independent Certified Public

Accountant (CPA), Vendor's Chief Financial Officer or Chief Executive Officer stating specifically that (a) he/she has examined the Annual Report, (b) his/her examination included such tests of Vendor's books and records as he/she considered necessary or appropriate under the circumstances, (c) such report presents fairly the information reflected for the preceding Agreement Year (or, in the case of the first Agreement Year, from the period from the Commencement Date until the end of the first Agreement Year), (d) the information reflected conforms with and is computed in compliance with the definitions set forth in this Agreement, and (e), if the certificate is submitted by a CPA, the standards observed by the CPA in its audit are such that it planned and performed the audit to obtain reasonable assurances that Vendor's report is free from material misstatement.

9. AUDITS AND RETENTION OF RECORDS

9.1 The Port or its designee and other authorized representatives of the State of Washington shall have the right to inspect, audit or copy documents for the evaluation and determination of any issue related to the Agreement or to the Vendor's performance thereunder, specifically including but not limited to any Claims brought by the Vendor or any supplier at all reasonable times.

9.2 For the above-referenced purpose, all of the documents related to this Agreement shall be open to inspection, audit, or copying by the Port or its designee:

- During the Term of the Agreement;
- For a period of not less than six (6) years after the expiration or termination of the Agreement; and
- If any claim, audit, or litigation arising out of, in connection with, or related to this Agreement is initiated, all documents and records shall be resolved or completed, whichever occurs later.
- The Vendor shall retain the documents related to this Agreement for the periods required above. The Vendor shall also ensure that the documents of all suppliers shall be retained and open to similar inspection or audit for the periods required above by incorporating the provisions of this Audit Paragraph into any agreements with suppliers related to this Agreement.

9.3 The Vendor, its suppliers shall make a good faith effort to cooperate with the Port and its designees when the Port gives notice of its need to inspect or audit documents.

9.4 The cost of the audit shall be borne by the Port unless the results of such audit reveal a discrepancy of more than two percent (2%) reported in accordance with the Concession Fees requirement of the Agreement for any twelve (12) month period. In the event of such discrepancy, the full cost of the audit shall be borne by the Vendor, and Vendor shall promptly pay all additional fees owing to the Port. No additional compensation will be provided to the Vendor, its suppliers for time or money spent in complying with the requirements of this Audit Paragraph. If the Vendor is formally dissolved, assigns or otherwise divests itself of its legal capacity under this Agreement,

then it shall notify the Port and preserve all documents, at its expense, as directed by the Port.

9.5 In the event that Vendor's books of accounts are not maintained in the Puget Sound region, they shall be made available for audit locally within five (5) business days of a request by the Port, or Vendor shall pay in full, any travel and related expenses of Port representative(s) to travel the location outside the Puget Sound region. In addition, The Port shall have the right to conduct a "surprise" audit not more frequently than twice every twenty four months, and, in the event that Vendor's books and records are not maintained locally, Vendor shall further pay in full, any travel and related expenses of the Port representative(s) to travel the location outside the Puget Sound region for such "surprise" audit.

9.6 This Audit Paragraph shall survive for six (6) years after the termination or expiration of this Agreement, or conclusion of all Claims, audits or litigation, whichever occurs later.

10. STANDARDS OF OPERATION

10.1 First Class Service. Vendor shall ensure that the operations relating to this Agreement are, at the minimum, in conformance with the following standards:

10.1.1 General Standards.

10.1.1.1 Vendor shall provide the highest degree and standards of quality of services to the patrons of the Airport. Vendor shall furnish prompt, efficient, first-class service that is adequate to meet all reasonable demands for its Goods & Services, and shall conduct the Concession in a first-class manner.

10.1.1.2 Menus for food and beverage shall be subject to the prior review and approval by the Port Representative. Vendor shall provide breakfast, lunch, dinner, snacks and reception options, and break package options (am, pm and all day) during the required hours of operation. Menus shall specifically include vegetarian, vegan, dairy-free and gluten-free items for all meal times. Vendor must be willing to provide menu options for additional dietary restrictions upon request. Vendor must provide seasonal menu items at least two (2) times per calendar year that include seasonal ingredients and items outside of the standard menus, at comparable pricing to the standard menus.

10.1.1.3 All of Vendor's prices for menu items shall be subject to the Port's prior written approval. The parties agree that Vendor's initial pricing levels shall be consistent with those proposed by Vendor as part of the request for proposal process under which Vendor was selected, and those pricing levels will not change for at least the first year of the Agreement, starting on the Commencement Date. After the first year, pricing levels may be subject to adjustment only with the Port's prior written approval.

10.1.1.4 Vendor shall perform timely removal of food and beverage products from conference rooms and buffet tables, in accordance with King County and Washington State applicable food safety laws. If customer requests to take remaining food items, Vendor shall provide appropriate to-go containers and refrigerate perishable items until the customer is departing and signs a release of liability form.

10.1.1.5 Vendor shall use reusable cutlery, plates and glasses whenever practical. When reusable alternatives are impractical, Vendor shall use compostable serviceware approved by Cedar Grove Composting (or other composting vendor with whom the Port deals) and make reasonable efforts to ensure that all such serviceware and food waste is composted. The cost of compostable goods will be included in the cost of the food and beverage pricing. Vendor may not impose extra fees for compostable goods.

10.1.1.6 Vendor shall develop and implement appropriate to-go procedures for leftover food utilizing proper food and health safety practices and environmentally friendly containers. Vendor must be able to provide a reasonable quantity of to-go containers for each event upon request. Before any food is allowed to leave the premises, the Vendor is required to obtain a signed release of liability from each user that is taking the food. The liability release form must include release of any Port of Seattle liability, and a copy of the signed release must be provided to the Port for our records (sent to contract manager). From time-to-time, there are leftover hot foods or other foods which are not suitable for environmentally friendly, compostable containers. In this case, other forms of to-go packaging may be utilized to facilitate the safe transportation of food that will be taken off Premises. If the leftover foods are to remain on the Premises until disposed of (e.g. Port employee taking leftovers up to their office or pantry in the AOB), those foods will be required to be in environmentally friendly, compostable containers.

10.1.1.7 Concession operations must be conducted in a safe, clean, orderly and inviting condition at all times. Trash or debris shall not be allowed to accumulate or be stored on any portion of the Premises. Similarly, no loud, boisterous or otherwise improper actions or language shall be permitted within or about the Premises. Catering staff may not lounge in Conference Center lobby areas. No radio or television or other similar device shall be installed without first obtaining the written approval of the Port. Also, no antenna or aerial shall be erected on the roof, interior walls or exterior walls of the Premises without first obtaining the written approval of the Port.

10.1.1.8 Vendor agrees to provide catering seven (7) days a week for meetings and events held between 6:00 a.m. and 10:00 p.m., or such other hours prescribed from time to time by the Port Representative. Any events/meetings scheduled outside of the given hours may be

subject to additional fees as agreed upon by the Port in advance, in writing.

10.1.1.9 Weekly Meetings and Reports. Vendor will meet weekly with Port staff to review food and beverage orders and upcoming events. Vendor will send the Port copies of food and beverage orders a minimum of one week prior to the event, and daily for orders that are received less than 7 days out. Vendor will send a copy of all final, paid invoices to the Port within a reasonable and agreed upon amount of time. Vendor will provide a copy of written communications with the client upon request.

10.1.1.10 Vendor shall provide a clear and easy-to-use website. The website shall have an area dedicated to The Conference Center as a venue, apart from any other venue(s) with which the Vendor may work. The website must include current menus for The Conference Center and must be kept up to date with all policy and procedures and other important information. Vendor shall include a reference and link to The Conference Center on Vendor's website.

10.1.1.11 Vendor shall provide visually appealing format and easy to read menus with current pricing, in electronic format for the Conference Center staff.

10.1.1.12 Vendor shall include The Conference Center venue in its sales and marketing efforts. These efforts must include (but are not necessarily limited to) Vendor's website and social media efforts, outbound sales efforts, prospecting, networking, and cross promotions. Use of The Conference Center name or branding must be approved in writing by the Port Representative prior to being published. Vendor shall provide a report to the Port Representative a minimum of twice per year of the sales and marketing activities.

10.1.1.13 All written complaints concerning Vendor's operation shall be responded to in writing by Vendor within forty-eight (48) hours and shall be reported to the Port Representative along with the response. Depending on the nature of the complaint, a more expeditious response may be required.

10.1.1.14 If Vendor is conducting its business under a license or franchise, Vendor represents and warrants to the Port that Vendor has been granted the right to use any trade name that may be used at the Premises for the entire term of this Agreement, pursuant to a franchise or license agreement (the "Franchise Agreement") with the trade name owner (a "Franchisor"). At the Port's request, Vendor agrees to provide the Port with a copy of the Franchise Agreement and reasonable evidence that such agreement remains in full force and effect. Vendor agrees that the termination of Vendor's right to use Vendor's trade name at the Premises or to conduct an operation at the Premises of the type then conducted by or under license from Franchisor under Vendor's trade name, shall constitute a material breach of Vendor's obligations

under this Agreement. Vendor agrees that if such Franchise Agreement is terminated, the Port shall have the right to terminate this Agreement.

10.1.2 PERSONNEL

10.1.2.1 Vendor shall employ a sufficient number of personnel necessary for the efficient and effective operation of the Concession. Vendor shall provide regular, consistent staff members to work on the Premises (e.g. same staff members typically service this contract) or provide the Port with a weekly schedule of personnel assigned to work at The Conference Center at least one week in advance. Vendor shall provide the Port appropriate documentation for staff working on the Premises and handling food or alcohol, such as food handler cards and alcohol server permits. Vendor shall also provide the Port with contact information such as cell phone numbers for staff members working onsite, should there be any last-minute changes, questions, or issues regarding an order.

10.1.2.2 Prior to working on the Premises, taking orders, or assisting customers, Vendor's staff (office staff, servers, or other personnel) shall attend an orientation with Conference Center staff to understand The Conference Center's facilities, operations, procedures, and clientele. New employees added to the Vendor's staff after the initial orientation must attend an orientation a minimum of seventy-two (72) hours before they are permitted to work on site or assist customers. Employees will not be permitted to provide Goods & Services on the Premises until they have attended orientation. Exceptions to the orientation requirements may be approved on a case-by-case basis in writing by the Port Representative.

10.1.2.3 Vendor shall train all its employees in the proper operation of its business (including food handling procedures), the compliance with any applicable laws and regulations and the provisions of this Agreement, and how to provide exceptional customer service. Vendor shall provide the Port with a copy of their training program when requested.

10.1.2.4 The on-site catering staff shall be supervised by competent staff who shall be available by phone at all times when Vendor's staff is on the Premises and who shall have full authority to make day-to-day business and operational decisions. The Port shall be notified when managers are out of the office and be provided with an alternate contact.

10.1.2.5 When on duty, all of Vendor's employees having dealings with the Port or the public shall maintain a clean, neat and well-groomed appearance, shall be courteous, and shall wear a uniform or other appropriate attire as established by Vendor. No jeans, sweatpants, or otherwise unprofessional attire is permitted while having dealings with the Port or the public. The Port has the discretion to ask any employee

who does not meet these requirements to change their attire/appearance or leave the Premises.

10.1.2.6 Vendor shall provide the Port a list of employees and their telephone numbers and email addresses, and expected response time should an immediate need arise. The Port Representative must be notified immediately of changes in Vendor's staff who support the operations of this contract, to include office and onsite personnel.

10.1.2.7 Vendor and its personnel shall keep confidential any non-public information of the Port or any customers of the Port that Vendor or its personnel learn in the course of providing any services under the Agreement. Vendor, on behalf of itself and its employees, specifically agrees to execute a confidentiality agreement if reasonably requested by any customer of the Port as a condition of providing catering services for such customer.

10.2 USE OF PREMISES

10.2.1 Vendor shall use the Premises solely for the operation of business directly related to the obligation(s) of the Agreement. Vendor shall specifically have access to the Staging Kitchen, on a shared basis, for purposes of set-up and staging of catering deliveries in connection with the Concession. Use of the Premises for clerical purposes shall not be permitted except for those that must be performed on site in order for Vendor to operate the Concession. The Port retains the right to change at any time, what is provided for the Vendor's use. All building operation guidelines must be followed at all times.

10.2.2 Vendor will access the Premises through areas designated by the Port. Access, including deliveries, is controlled by the Port's Ground Transportation Operations staff, and Vendor may be required to purchase annual permits for each vehicle making use of the South Ground Transportation Lot.

10.2.3 Vendor shall provide its own coffee brewing equipment in connection with its operations from the Premises. Vendor may store that equipment in the Staging Kitchen, but the Port shall not be responsible for any damage or loss to that equipment.

10.2.4 Vendor shall return the Premises following their use in the same or better condition than when received. Without limiting the foregoing, the Vendor shall perform the following cleaning each time they provide catering on the Premises:

- Remove trash/food & beverage waste from all surfaces in the Conference Room and utilize the appropriate receptacle (trash, compost, recycle, etc.). This includes cups, napkins, and plates that are dispersed throughout the meeting rooms on the tables, counters, and on the floor.
- Wipe down all surfaces that had contact with food and/or beverage.

- Clean up areas of carpet that have an extreme amount of crumbs (i.e., popcorn, chips, frosting) or notify conference staff of these areas so that Port staff can notify the janitorial vendor.
- Clean up any spills on carpet as best as possible and notify conference staff of these areas so that Port staff can notify the janitorial vendor.
- After cleaning up the Conference Room(s), lock the doors and turn off lights as necessary.
- Clean kitchen countertop surfaces, china, and equipment (inside and out); keep cabinets, drawers, refrigerator and any other storage areas organized. Equipment and service items are not to be stored in any manner that violates Fire or Safety codes.
- Place linens and remove linens from all food and beverage and other tables as necessary or requested by the Port. Generally, conference staff will place linens on the guest tables before the event. If a group orders catering, Vendor's staff is required to remove the linens from both the food and beverage tables and the guest tables and properly store them in the dirty linen bags. Linens are provided by the Port and Vendor will have access to the linen inventory only for events held in The Conference Center.
- When trash receptacles in the kitchen are full, Vendor's staff shall notify Conference Center staff of full garbage. Conference Center staff will notify the janitorial vendor for disposal and placement of a new bag in the receptacle.
- Refrigerator: The prep kitchen has one commercial refrigerator intended for temporary storage of food and beverage. Vendor is to keep the refrigerator clean and organized at all times. From time-to-time, the Port may need to store items in the refrigerator. It is a shared space. Vendor is to notify the Port immediately of any issues with the refrigerator. The Port will manage maintenance and repair of the refrigerator when necessary.
- Dishwasher: The prep kitchen has two dishwashers intended for washing of small serviceware items such as tongs, spoons, glasses, and plates. Larger items must be washed at the Vendor's facility. Vendor will provide their own dishwashing soap and cleaning supplies, along with accompanying MSDS sheets to be posted in prep kitchen. Vendor is to unload the clean dishes from dishwasher in a timely manner. Vendor is to notify the Port immediately of any issues with the dishwasher. The Port will manage maintenance and repair of the dishwashers when necessary.
- Sink: The 3-compartment sink must be kept clean and water turned off with the latch locked when not in use. Vendor is to notify the

Conference Center staff immediately of any issues with the sink. The Port will manage maintenance and repair of the sink when necessary.

10.2.5 Vendor shall be responsible to repair any damage caused by Vendor in connection with the use of the Premises.

10.2.6 Vendor shall not remove any Port-owned equipment or items (such as water pitchers, china, silverware, etc.) from the Premises without prior written approval from the Port.

10.2.7 Vendor shall not - without the Port's prior written approval and subject to such conditions as the Port may elect - either (i) make any alterations, additions, substitutions or improvements to the Premises or (ii) other than on a temporary basis as necessary to provide the services under this Agreement, install any item of equipment in, on or around the Premises.

10.2.8 No signs, promotions or other advertising matter, symbols, canopies or awnings (collectively "Signs") shall be attached to or painted on within, or outside the Premises, including the walls, windows and doors thereof, without the prior written approval of the Port. Any permitted Sign shall be professionally prepared.

10.2.9 All loading and unloading of goods, the delivery or shipping of merchandise, supplies, and fixtures to and from the Premises shall be done only at such time, in the areas, and through the entrances designated for such purposes by the Port Representative, pursuant to a schedule developed by the Port from time to time.

10.2.10 Garbage, refuse and other debris shall be placed in such containers in non-broken, non-punctured, new 3-mil trash bags or such other garbage containers as may be required by the Port Representative suitable for transportation to a designated bin or compactor in the manner and at the time and places specified by the Port Representative. The Port will provide the trash bags, bin or compactor.

10.2.11 Vendor shall not disturb the Port or any other tenant of the Port by making or permitting any disturbance or any unusual noise, vibration or other condition on or about the Premises.

10.2.12 While the Port may provide parking facilities to the Vendor's employees in common with employees of other tenants and customers of the Airport, it retains the right to impose a reasonable charge for the privilege of utilizing these parking facilities. Nothing herein contained shall be deemed to require the Port to provide parking facilities to Vendor's employees.

10.3. PRODUCT AND TREND REPORTING

The Vendor shall utilize software that has the capability to generate reports on catering services provided at The Conference Center. Reports shall include at a quarterly minimum:

- Sales to Port of Seattle customers at all locations
- Sales to external customers at The Conference Center
- Product popularity and trends
- Size of meeting catered
- Type of catering ordered, e.g., all day package, lunch only, etc.

As reasonably requested by the Port, the Vendor shall provide professionally prepared reports that provide items such as a clear picture of catering trends, product popularity, average sale amount, average guest count, and gross sales associated with Vendor's operations.

10.4 VENDOR OTHERWISE RESPONSIBLE

Vendor shall otherwise obtain all licenses/permissions necessary for, and pay all costs and expenses incurred with respect to, the operation of the Concession, it being understood and agreed that the Port shall not, except as specifically set forth in this Agreement, be required to furnish services of any nature with respect to the operation of the Concession, Vendor hereby assuming full and sole responsibility for the supply and payment for all licenses, services, and operational costs. This includes, without limitation, all taxes, permit fees, license fees and assessments lawfully levied or assessed upon the Vendor.

10.5. QUALITY ASSURANCE AUDITS

The Port may conduct the following regular performance inspections ("Quality Assurance Audits") to ensure compliance with all of the standards of operation set forth in Section 10 as well as anywhere else they may appear in this Agreement:

10.5.1 The Port may, in its discretion, review each of Vendor's concession operations for quality assurance at any time but not more frequently than once a quarter.

10.5.2 The Port shall document all Quality Assurance Audits on Quality Standards Performance form. All Quality Assurance Audits shall, at a minimum, focus on, but not be limited to, the following:

10.5.2.1 Products - Delivered as represented, taste, attractiveness and proper temperature.

10.5.2.2 Personnel - Professionalism, appearance, customer service, receipts provided and activity.

10.5.3 The Port shall provide Vendor with written results of the Quality Assurance Audits. Where deficiencies in performances are noted, the Port shall provide Vendor with fifteen (15) days to correct all deficiencies noted in the Quality Assurance Audits. Vendor shall promptly notify the Port of the corrections as completed, or request additional time to correct outstanding items where the Port determines progress has been made by Vendor to correct such deficiencies.

10.5.4 In the event that Vendor fails to timely correct the deficiencies noted in any Quality Assurance Audit as provided in this Section, the Port may issue a notice of default pursuant to terms of the Contract; provided, however, the applicable cure period shall be fifteen (15) days notwithstanding anything to the contrary to the terms of the Contract.

11. INDEMNIFICATION

11.1 To the maximum extent permitted by law, Vendor shall indemnify, defend and save harmless the Port, the commissioners, representatives, directors, officers, agents and employees of the Port, and those in privity of estate with the Port, from and against all claims, expenses (including, without limitation, attorney's fees) or liability of whatever nature: (a) arising from any default, act, omission or negligence of Vendor, or Vendor's contractors, licensees, agents, servants or employees, or the failure of Vendor or such persons to comply with any rule, order, regulation or lawful direction now or hereafter in force of any public authority, in each case to the extent the same are related, directly or indirectly, to the provision of catering services under this Agreement or Vendor's use of the Premises; or (b) arising directly or indirectly, out of default by Vendor under any of the terms or covenants of this Agreement, or in connection with any mechanical, electrical, plumbing, or any other equipment or installations that are to be maintained or repaired by Vendor; provided, however, nothing in this Section shall require Vendor to indemnify the Port from injury or damage caused by the sole negligence of the Port. This indemnity and hold harmless agreement shall include indemnity against all costs, expenses (including, without limitation, reasonable attorneys' fees) and liabilities incurred in or in connection with any such claim, or any action or proceeding brought thereon. If any action or proceeding be brought against the Port by reason of any such claim, Vendor, upon notice from the Port, shall, at Vendor's expense, resist or defend such action or proceeding and employ counsel therefore acceptable to the Port.

11.2 In consideration of the Port's execution of this Agreement, Vendor hereby waives any immunity Vendor may have under applicable worker's compensation benefit or disability laws, (including but not limited to Title 51 RCW) in connection with the foregoing indemnity. Such waiver shall not prevent Vendor from asserting such immunity against any other persons or entities. LESSEE AND PORT AGREE AND ACKNOWLEDGE THAT THIS PROVISION IS THE PRODUCT OF MUTUAL NEGOTIATION.

12. INSURANCE

12.1 Required Insurance. Vendor shall procure and maintain insurance in the following minimum form and limits identified below. All deductibles or self-insurance retentions are the responsibility of the Vendor. Vendor may meet required insurance limits through a combination of primary and umbrella or excess insurance. Any insurance the Port may carry will apply strictly on an excess basis over any applicable insurance the Vendor may carry. Coverage shall not lapse or be terminated throughout the duration of the purchase term, contract or lease duration. Insurance coverage shall be in place at all times. Vendor shall submit endorsements along with a Certificate of Insurance where indicated below. Vendor shall provide evidence of insurance on each insurance renewal date that falls within the term of this Agreement.

12.1.1 Commercial General Liability insurance on ISO Form CG 00 01 10 01 (or equivalent) for third party property damage, bodily injury, personal and advertising injury, and medical payments in an amount which is not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate. The insurance shall cover liability arising from premises, operations, products completed operations, and liability assumed under an insured contract.

12.1.2 The Vendor's insurance shall be primary and non-contributory with respect to any insurance the Port carries and apply separately to each insured. Port shall be named as an additional insured for all work arising out of Vendor's work, including "on-going" and "completed operations" using ISO Form CG 20 26 or an equivalent endorsement approved by the Port.

12.1.3 The policy must contain a Liquor Liability Endorsement add coverage for bodily injury and property damage resulting from the sale, distribution, or serving of liquor. Limits shall be no less than the same amount and of the same type as identified above under commercial liability insurance.

12.1.4 Vendor shall be responsible for maintaining and complying with all City, County, and State food handling and liquor licensing permits, both on a company and individual server basis as applicable.

12.2 Business automobile insurance is required for vehicles accessing Port of Seattle marine properties and terminals, and for vehicles using the loading dock at the airport, and for all vehicles used on the airfield. Limits in this case shall be no less than \$ 1 Million per occurrence on a combined single limit for bodily injury and property damage.

12.3 Vendor is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for its employees. Vendor shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Vendor's worker compensation account prior to commencing work, including those Vendors who are qualified self-insurers with the state.

12.4 If Vendor is to use Subcontractors, the Subcontractors will be subject to the same insurance requirements as the Vendor, and Subcontractors shall submit evidence of the insurance to the Port with a Certificate of Insurance and an Additional Insured endorsement for the Commercial General Liability insurance. The Port shall be the Certificate Holder and the Additional Insured.

12.5 Workers' Compensation. Vendor is responsible for complying with the Washington State laws that pertain to industrial insurance (Reference Revised Code of Washington, Title 51 Industrial Insurance) for its employees. Vendor shall submit a current employer liability certificate as issued by the Washington Department of Labor and Industries that shows the status of Vendor's worker compensation account prior to commencing work, including those Vendors who are qualified self-insurers with the state.

12.6 Within five (5) Days after receipt of the Notice of Intent to Award, Vendor shall provide evidence of all insurance specified above. All such

insurance shall be kept in force for until final acceptance or longer to the extent so required by the Contract.

12.7 No Limitation of Liability. The limits of insurance required in this Contract or as carried by Vendor shall not limit the liability of Vendor nor relieve Vendor of any obligation hereunder. Any specified limits of insurance shall not be construed as to relieve the Vendor from liability in excess of the limits. The minimum limits indicated are not a representation or warranty that the Port has assessed the risks that may be applicable to the Vendor under this Contract.

12.8 Waiver of Subrogation. Without affecting any other rights or remedies, Vendor (for itself and on behalf of anyone claiming through or under it by way of subrogation or otherwise) hereby waives any rights it may have against the Port, its officers, agents and employees (whether in contract or in tort) on account of any loss or damage occasioned to Vendor arising out of or incident to the perils required to be insured against within the Contract. Accordingly, Vendor shall cause each insurance policy required by Contract to further contain a waiver of subrogation clause. The effect of such release and waiver of the right to recover damages shall not be limited by the amount of insurance carried or required or by any deductibles applicable thereto.

13. PORT PAYMENT TO VENDOR

13.1 Payment for Goods & Services ordered by the Port shall be made by procurement card (p-card) for orders equal to or less than \$5,000. Orders greater than \$5,000 shall be made by purchase order with remittance to the Vendor by direct deposit electronic funds transfer (ACH). The purchase order and/or p-card will be provided at the time the order is placed. The Vendor shall not store the p-card numbers in their financial/accounting system. The p-card number shall be given each time an order is placed. Following delivery and acceptance of the Goods & Services under this Agreement, the Vendor may submit to the Port for approval an itemized invoice which shall include the purchase order, if applicable for the items delivered as provided for in the Agreement. Payment upon receipt shall be made of a properly completed invoice or receipt of goods, whichever is later, the amounts so determined, less previous payments and less such sums as the Port may be entitled to retain under the provisions of the Agreement, shall be paid to the Vendor.

13.2 By accepting payment, the Vendor shall be deemed thereby to have released the Port from all claims of Vendor and all liability to the Vendor in connection with the Goods & Services and for every act and neglect of the Port and others relating to or arising out of the Goods & Services.

13.3 The Port's actions in making any payment does not in any way relieve the Vendor from its responsibility for the Goods & Services or its responsibility to repair, replace, or otherwise make good Non-Conforming Goods & Services. Nor do any of these actions constitute a waiver of the Port's right to reject Non-Conforming Goods & Services or any other rights. Without limiting the generality of the foregoing, the Port shall have the right to seek reimbursement of any amount it determines was overpaid

to the Vendor and to recover damages for any unauthorized or Non-Conforming Goods & Services.

14. PROMPT PAYMENT TO SUBCONTRACTORS

Generally, when the Vendor receives payment from the Port for Goods & Services furnished by Subcontractors hired by the Vendor, the Vendor shall remit payment due to those Subcontractors and suppliers within fifteen (15) calendar days after the Vendor's receipt of payment from the Port. Nothing herein shall prohibit the Vendor from disputing, pursuant to the terms hereof, all or any portion of a payment alleged to be due to its Subcontractors. In the event of such dispute, the Vendor may withhold the disputed portion of any such payment only after the Vendor has provided notice to the Port and to the Subcontractor whose payment is in dispute, which notice shall: (1) be in writing; (ii) state the amount in dispute, (iii) specifically describe the actions required to cure the dispute, (iv) be delivered to the Port and to the said Subcontractor within ten (10) calendar days after the Vendor's receipt of payment from the Port. The Vendor shall pay all undisputed amounts due within the time frames specified in this section.

15. PORT'S RIGHT TO WITHHOLD PAYMENT

15.1 The Port has the right to withhold payment otherwise due the Vendor if and so long as the Vendor does not meet any of its obligations under this Agreement to the extent as may be reasonably necessary to protect itself from loss. The Buyer will notify the Vendor of the reasons for any amounts withheld and the remedy required.

15.2 The Vendor shall be paid monies earned by fulfilling its responsibilities under this Contract. Monies shall not be considered earned if any of the following conditions applies:

1. The Goods & Services for which the Vendor is claiming payment was not performed in accordance with the Contract.
2. Defective, damaged or Non-Conforming Goods & Services not remedied or warranties not met.
3. Claims filed or reasonable evidence indicating filing of claims against the Vendor.
4. Vendor's failure to meet any performance warranties required by the Contract Documents.
5. Failure of the Vendor to provide all drawings, manuals, and other information required by the Contract.
6. The Vendor's invoice does not contain the required documentation or is otherwise not in conformance with the requirements of this Contract;
7. Failure of the Vendor to make payments owed to suppliers, or for labor, materials, or equipment.
8. Failure to pursue delivery of the Goods & Services in a timely manner or failure

to take necessary steps to regain time or deliver the Goods & Services in the prescribed Contract Time.

9. A reasonable doubt that the Contract can be completed for the balance then unpaid.

15.3 In the event the Port withholds all or a part of a payment for deficiencies in either performance, or in an invoice, the Port will notify the Vendor. The Vendor shall have the right to correct all deficiencies that are the basis for the withholding and resubmit the invoice at any time for reconsideration.

15.4 The Vendor shall provide a contact name, address, and email address to facilitate notification if any payment, or portion of any payment, is withheld for any of the reasons above, or for missing documentation or items incorrectly invoiced. Notification shall be made via email, or shall be mailed, properly addressed and stamped with the required postage to the person designated by the Vendor in the Proposal.

16. TAXES

16.1 Vendor shall be liable for, and shall pay throughout the term of this Agreement, all license and excise fees payable for, or on account of, the activities conducted on the Premises and all taxes on the property of Vendor on the Premises and any taxes on the Premises and/or on the leasehold interest created by this Agreement and/or any taxes levied in lieu of a tax on said leasehold interest and/or any taxes levied on, or measured by, rent or fees payable hereunder, whether imposed on Vendor or on the Port. Vendor shall reimburse the Port for all such taxes paid or payable by the Port. With respect to any such taxes payable by the Port which are on or measured by the rent or fee payments hereunder, Vendor shall pay to the Port with each rent or fee payment an amount equal to the tax on, or measured by that particular payment. All other tax amounts for which the Port is or will be entitled to reimbursement from Vendor shall be payable by Vendor to the Port at least fifteen (15) days prior to the due dates of the respective tax amounts involved; provided, that Vendor shall be entitled to a minimum of ten (10) days' written notice of the amounts payable by it.

16.2 Unless otherwise indicated, the Port agrees to pay all applicable State of Washington sales or use tax. The Port is exempt from Federal excise taxes and an exemption certificate will be furnished upon request. The price for the Goods & Services shall include all other applicable federal, state and local taxes, except those for which an exemption may be claimed by the Port.

17. COMPLIANCE

Vendor agrees to comply with all applicable rules and regulations of the Port, whether now in existence or hereafter promulgated, pertaining to (a) the building or other realty of which the Premises are a part of, which exist for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, and (b) the food and beverage areas located within the Airport. Vendor further agrees to comply with all applicable federal, state, and municipal laws, ordinances, and regulations, including without limitation those relating to environmental matters and airport security. Any fees for any

inspection of the Premises during or for the term of the Agreement by a federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Vendor.

18. ACCESS CONTROL

The Vendor's employees working at the Airport must obtain Port-issued identity (ID) badges from the Airport Identification/Access Control Section of the Port of Seattle. A background check required by the Transportation Security Administration (TSA) will be performed by The Vendor on all prospective employees for whom such badges are needed. The Vendor will be responsible for all costs associated with issuing, renewing and replacing badges for The Vendor's employees and/or subcontractors. The Vendor's managers will, to the extent allowed by Port regulations, obtain authority for approving applications for badges and keys and administer such approvals. The Vendor understands that its employees need to work inside secure areas and that display of identification is required at all times. The Vendor will plan sufficiently far ahead in recruiting and hiring staff to allow for delays in issuing of badges.

19. ACCESS AUTHORIZATION

Vendor must submit an ID Badge Control Authorization Request Form for any employee that is required to enter any area that is restricted by badge/swipe access. The request form must include a description of the location and the number of the door through which access is required.

20. ASSIGNMENT

Vendor shall not assign or transfer this Agreement or any interest therein, nor shall this Agreement or any interest there under be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise without the advance written consent of the Port. If Vendor is anything other than an individual, Vendor further agrees that if at any time during the term of this Agreement more than one-half (1/2) of the outstanding voting equity interests shall belong to any persons other than those who own more than one-half (1/2) of those outstanding voting equity interests at the time of the execution of this Agreement or to members of their immediate families, such change in the ownership of Vendor shall be deemed an assignment of this Agreement within the meaning of this Section; provided, however, that this sentence shall not apply if, and to the extent that Vendor is a corporation, the outstanding voting stock of which is listed on a recognized security exchange. Vendor's entering into any operating agreement, license or other agreement where under a third party is given rights or privileges to utilize a portion of the Premises shall be an attempted assignment or subletting within the meaning of this Section.

21. DEFAULTS AND REMEDIES

21.1 Defaults. Time is of the essence for each of Vendor's obligations under this Agreement. The occurrence of any one or more of the following events constitutes a default of this Agreement by Vendor with or without notice from the Port:

21.1.1 The failure by Vendor to make any payment of Percentage Fees, or any other payment required by this Agreement, when due.

21.1.2 The discovery by the Port that any financial or background statement provided to the Port by Vendor, any successor, grantee, or assignee was materially false.

21.1.3 The filing by Vendor of a petition in bankruptcy, Vendor being adjudged bankrupt or insolvent by any court, a receiver of the property of Vendor being appointed in any proceeding brought by or against Vendor, Vendor making an assignment for the benefit of creditors, or any proceeding being commenced to foreclose any mortgage or other lien on Vendor's interest in the Premises or on any personal property kept or maintained on the Premises by Vendor.

21.1.4 A failure by Vendor to observe or perform any covenant, condition, or agreement to be observed or performed by Vendor under this Agreement.

21.2 Remedies. Whenever any default (other than a default under the section 0 above, upon which termination of this Agreement shall, at the Port's option, be effective immediately without further notice) continues unremedied in whole or in part for 30 days after Notice of Default is provided by the Port to Vendor (or for 15 days after Notice of Default in the case of default for failure to pay any fees or other required payment when due), this Agreement and all of Vendor's rights under it will automatically terminate if the Notice of Default so provides. The Port will be entitled to recover from Vendor all unpaid Concession Fees, other sum or charge otherwise payable by Vendor, or any other payments and damages incurred because of Vendor's default including but not limited to, the reasonable and necessary costs of granting a replacement concession, any advertising reasonably required, any commissions reasonably required, and attorney's fees and costs reasonably required ("Termination Damages"), together with interest on all Termination Damages at the Default Rate, from the date such Termination Damages are incurred by the Port until paid.

21.3 Remedies Cumulative. All rights, options and remedies of the Port contained in this Agreement shall be construed and held to be distinct, separate and cumulative, and no one of them shall be exclusive of the other, and the Port shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law or in equity, whether or not stated in this Agreement.

21.4 Time is of the essence for each of the Port's obligations herein. The failure by the Port to observe or perform any covenant, condition or agreement to be observed or performed by Port under this Agreement shall constitute a default. Vendor may terminate this Agreement by written notice upon the Port's failure to cure a default after 30 days' written notice and opportunity to cure.

22. TERMINATION OF AGREEMENT

This Agreement may be terminated in advance of its scheduled expiration date on any of the following events:

22.1 In the event of Vendor's or Port's default under the Agreement pursuant to Section 21, Defaults and Remedies.

22.2 In the event that Vendor provides unsatisfactory service as gauged by complaints, declines in conference center and/or catering bookings, and/or negative

Quality Assurance Audits. In the event that the Port believes that Vendor has provided unsatisfactory services, it shall provide written notice thereof to Vendor; and Vendor shall have thirty (30) days within which to increase service levels to a satisfactory condition. In the event that Vendor is not, in the reasonable opinion of the Port, providing satisfactory service at the end of this sixty day period, the Port shall have right to terminate this Agreement.

22.3 In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations under this Agreement, then either party hereto may terminate this Agreement by written notice, and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Vendor is not in default under any of the provisions of this Agreement on the effective date of such termination, any concession fees prepaid by Vendor shall, to the extent allocable to any period subsequent to the effective date of the termination, be promptly refunded to Vendor."

22.4 The Port may terminate this Agreement, in whole or in part, for the Port's convenience at any time and for any reason by giving a written termination notice to Vendor and the Port's payment to Vendor of termination charges computed in the following manner: (1) a sum computed and substantiated in accordance with standard accounting practices for those reasonable costs incurred by Vendor prior to the date of termination, for orderly phase out of performance as requested by the Port in order to minimize the costs of the termination; and (2) a reasonable profit for the Goods & Services accepted; HOWEVER THE PORT SHALL NOT BE LIABLE TO VENDOR FOR ANY ANTICIPATED PROFITS ON THE TERMINATED PORTION OF THE AGREEMENT, OR CLAIMS OF UNABSORBED OVERHEAD OR OTHER FIXED COSTS. IN NO EVENT SHALL THE PORT BECOME LIABLE TO PAY ANY SUM IN EXCESS OF THE PRICE OF THIS AGREEMENT FOR THE TERMINATED GOODS & SERVICES.

23. NONWAIVER

The acceptance of Percentage Fees by the Port for any period or periods after a default by Vendor hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Vendor in writing. Vendor shall construe no waiver by the Port of any default hereunder by Vendor to be or act as a waiver of any subsequent default. Failure of Vendor to object to Port's default shall not constitute a waiver of subsequent defaults.

24. ADVANCES BY PORT FOR VENDOR

If Vendor shall fail to perform any act required by this Agreement in a manner reasonably satisfactory to Port, the Port, without waiving or releasing Vendor from any obligation or default under this Agreement, may (but shall be under no obligation) at any time thereafter make such payment or perform such act for the account and at the expense of Vendor. All sums so paid by Port and all costs and expenses incurred in connection therewith shall be paid immediately by Vendor upon invoice by the Port. The Port may, in its sole discretion, apply all or any portion of any Security toward the satisfaction of said sums.

25. NOTICES

All notices hereunder shall be in writing and shall be delivered personally, by certified or registered mail, by facsimile or by recognized overnight courier addressed as follows:

To Lessor:

The Port of Seattle
Seattle-Tacoma International Airport
Attn: Conference Center Manager
P. O. Box 68727
Seattle, Washington 98168

To Vendor:

Amy and John Hatcher
Co-Owners and Corporate Officers
Café Pacific Catering, Inc. dba Café Pacific Catering
4402 Auburn Way N
Auburn, WA 98002

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices shall be deemed delivered (a) when personally delivered; (b) on the third day after mailing when sent by certified or registered mail and the postmark affixed by the United States Postal Service shall be conclusive evidence of the date of mailing; (c) on the date transmitted by facsimile, if the facsimile is confirmed received; or (d) on the first business day after deposit with a recognized overnight courier if deposited in time to permit overnight delivery by such courier as determined by its posted cutoff times for receipt of items for overnight delivery to the recipient.

26. ATTORNEYS' FEES

In the event that either party shall be required to bring any action to enforce any of the provisions of this Agreement, or shall be required to defend any action brought by the other party with respect to this Agreement, and in the further event that one party shall prevail in such action, the losing party shall, in addition to all other payments required therein, pay all of the prevailing party's actual costs in connection with such action, including such sums as the court or courts may adjudge reasonable as attorneys' fees in the trial court and in any appellate courts. For purposes of calculating attorneys' fees, legal services rendered on behalf of the Port by public attorneys shall be computed at hourly rates charged by attorneys of comparable experience in private practice in Seattle, Washington.

27. DISADVANTAGED BUSINESS ENTERPRISE (DBE) AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISES (ACDBE)

27.1 It is the policy of the Port to ensure that Disadvantaged Business Enterprises (DBEs) and Airport Concession Disadvantaged Business Enterprises (ACDBE), as defined in the DOT, 49 CFR Parts 23 and 26, and other small businesses have an equal opportunity to receive and participate in DOT-assisted contracts. The Port encourages

Vendor to make every reasonable effort to maximize the contracting opportunities for DBEs, ACDBEs and other small businesses in the procurement of goods and services necessary for the operation of the food and beverage concession at this Airport.

27.2 Vendor shall submit annual DBE and ACDBE participation reports to the Port starting one year after the commencement of this Agreement. Vendor shall submit such reports as may be required by the Port, for the purpose of demonstrating compliance with 49 CFR Parts 23 and 26.

28. PERMITS AND LICENSES:

Work permits, liquor licenses required for the sale of alcoholic beverages on the premises, other licenses and all certifications and authorizations required to provide the Goods & Services shall be maintained by the Vendor, at Vendor's sole cost and expense and remain in effect throughout the duration of the Agreement.

29. NON-DISCRIMINATION AND EQUAL EMPLOYMENT:

It is the basic policy of the Port of Seattle to provide equal opportunity to the users of all Port services and facilities and all contracting entities. Specifically, the Port will not tolerate discrimination against any persons on grounds of age, race, color, national origin/ancestry, ethnicity, religion, disability, Family Medical Leave Act (FMLA) use, pregnancy, sex/gender, sexual orientation, whistleblower status, military affiliation, marital status, workers' compensation use, transgender status, political beliefs, or any other protected status, as guaranteed by local, state and federal laws. The equal opportunity principles in employment and subcontracting described in this policy shall apply to the Port's employees, customers, consultants, Vendors, and suppliers to the extent possible as required by law. Submission of a properly executed Agreement constitutes a contractual commitment to the terms of this resolution.

During the performance of this Agreement, the Vendor, for itself, its assignees, and successors in interest agrees to comply with the requirements of the following non-discrimination statutes and authorities which are hereby incorporated; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin) and 49 CFR part 21;
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as

amended, (prohibits discrimination based on race, creed, color, national origin, or sex);

- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Vendors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 - 12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq.)

30. MANDATORY PROGRAMS

Vendor understands that, from time to time, the Port may institute certain programs that the Port believes, in its sole judgment, will be in the best interests of the Airport and its tenants. Such programs shall include, but not be limited to, trash recycling, commuter trip reduction, luggage cart token program, and Aircraft Operations Area (AOA) Clean Surface Program for FOD (Foreign Object Debris).

Vendor agrees to promptly comply with and carry out any and all obligations issued by the Port under such programs, as the same may exist from time to time.

31. LABOR DISPUTES

Vendor agrees to use its best efforts to avoid disruption to the Port, its tenants or members of the public, arising from labor disputes involving Vendor, and in the event of a strike, picketing, demonstration or other labor difficulty involving Vendor, to use its good

offices, including the utilization of available legal remedies, to minimize and/or eliminate any disruption to the Port, its tenants or members of the public, arising from such strike, picketing, demonstration or other labor difficulty.

32. FORCE MAJEURE

In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, fire or other casualty or other reason of a similar or dissimilar nature beyond the reasonable control of the party, delayed in performing work, or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of a party.

The provisions of this Section 32 shall not operate to excuse Vendor from the prompt payment of Percentage Fees as required by this Agreement and shall not extend the term of this Agreement.

33. INDEPENDENT CONTRACTOR

Vendor shall at all times be considered an independent contractor, and this Agreement with the Port shall not imply, infer, create or form a partnership, joint venture, or other corporate arrangement with the Port.

34. JOINT AND SEVERAL LIABILITY

Each and every party who signs this Agreement, other than in a representative capacity, as Vendor, shall be jointly and severally liable hereunder.

35. "VENDOR" INCLUDES VENDORS, ETC.

It is understood and agreed that for convenience, the word "Vendor" and verbs and pronouns in the singular number and neuter gender are uniformly used throughout this Agreement, regardless of the number, gender or fact of incorporation of the party who is, or of the parties who are, the actual Vendor or Vendors under this Agreement.

36. CAPTIONS

The captions in this Agreement are for convenience only and do not in any way limit or amplify the provisions of this Agreement.

37. PUBLIC DISCLOSURE

Vendor acknowledges that the PORT may be required to disclose information provided by Vendor pursuant to the Washington State Public Disclosure Act (RCW Chapter 42.56). The PORT will determine whether any requested documents should be disclosed. In no event shall the Port be liable to Vendor for any disclosure of documents and information, including work

product, excluded inventions and intellectual property rights it deems necessary to disclose under the law.

38. ANTITRUST ASSIGNMENT CLAUSE

Vendor and the Port recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the Port. Vendor therefore hereby assigns to the Port any and all claims for such overcharges as to Goods & Services purchased in connection with this Contract, except as to overcharges which result from antitrust violations commencing after the price is established under this Contract and which are not passed on to the Port under an escalation clause.

39. INVALIDITY OF PARTICULAR PROVISIONS

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

40. WAIVER

Failure at any time of the Port to enforce any provision of the Contract shall not constitute a waiver of such provision or prejudice the right of the Port to enforce such provision at any subsequent time. No term or condition of this Contract shall be held to be waived, modified or deleted except by written amendment signed by the parties hereto.

41. SURVIVAL OF INDEMNITIES

All indemnities provided in this Agreement shall survive the expiration or any earlier termination of this Agreement. In any litigation or proceeding within the scope of any indemnity provided in this Agreement, Vendor shall, at the Port's option, defend the Port at Vendor's expense by counsel satisfactory to the Port.

42. LAWS OF WASHINGTON; VENUE

This Agreement shall be construed under the laws of Washington. Jurisdiction and venue for any action relating hereto shall be in King County, Washington.

43. ENTIRE AGREEMENT - AMENDMENTS

This Agreement constitutes the entire agreement between the parties. There are no terms, obligations, covenants, or conditions other than those contained herein. No modification or amendment of this Agreement shall be valid or effective unless evidenced by an agreement in writing signed by both parties.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the day and year first above written.

VENDOR: CAFÉ PACIFIC CATERING, INC.
DBA CAFÉ PACIFIC CATERING,
A Washington corporation

PORT OF SEATTLE
A Washington municipal corporation

By: *Amy Hatcher*
Amy Hatcher

By: *Theodore J. Fick*
Theodore J. Fick

Its: *Secy/Treas.*
Co-Owner / Corporate Officer

Its: *COO for*
CEO

By: *John Hatcher*
John Hatcher

Its: *pres.*
Co-Owner / Corporate Officer

End of Agreement