

## **ADDENDUM G**

### **Nampa Civic Center Catering Agreement**

This agreement is entered into on September 1, 2009 between the CITY OF NAMPA and NAMPA CIVIC CENTER, of 311 3rd Street South, Nampa, Idaho, hereinafter referred to as "Center," and SODEXO AMERICA, LLC, a Delaware limited liability company, hereinafter referred to as the "Caterer."

#### **SECTION I**

##### **Grant of Catering Management & Agreement Information**

A. The Center retains the exclusive right to provide all Food and Beverage Service, including the exclusive right for all alcohol sales, services, and operations. The Caterer will manage these sales and activities on behalf of the Center and as part of its obligations under the Agreement.

B. The Agreement is for the exclusive right to manage Food and Beverage Service, including Alcoholic Beverages, at the Nampa Civic Center. Food and Beverage Service is defined as the preparation and serving of food and non-alcoholic/alcoholic beverages at a per-plate, per-person or per-order charge at the Center, regardless of the event, including, without limitation, banquets, meetings, conferences, exhibits, trade shows, and any other uses of the Center. The Center reserves the right, in its reasonable discretion, to waive the exclusivity of Food and Beverage Services in the following instances: (a) for city of Nampa Internal events; (b) for Center Garden Events, provided that Caterer would have the first right of refusal; (c) for Auditorium Events that elect to use the services of the Center Auxiliary for light refreshments during event intermissions; (d) for food service companies that rent a significant portion of the Center, including kitchen, under the Caterer's guidelines, for preparing food that will be served for their internal function, provided that such visiting food service companies shall be responsible for leaving the kitchen and the remainder of the facility in as good as condition as received, with all property left on premises; (e) for Auditorium customers who may select to have refreshments backstage during entertainment events for performers; and (f) for an event or series of events of overriding importance to the City of Nampa, provided that prior notice of such intended waiver is given to the Caterer and the consent of the Caterer is obtained, which consent shall not be unreasonably withheld by the Caterer. In all cases of the waiver by the Center of the exclusive right granted to the Caterer, prior timely notice of the Center's intent to grant such waiver shall be given to the Caterer, with the Caterer's consent required only under subsection (f), above. If such a waiver of the Caterer's exclusive right is granted by the Center, the Center shall be solely responsible for any damage to any fixtures, equipment or the facility, for the proper cleaning of the kitchen and related areas, and for the loss or breakage of any supplies, service wares or food and beverage inventory which is the property of the Caterer or for which the Caterer is responsible, arising from or during the event for which a waiver is granted by the Center.

C. The Caterer shall have the right to utilize the Center's facilities and equipment for off-premise catering events, provided that such use does not interfere with Caterer's ability to fulfill its obligations under this Agreement.

D. The Caterer shall have the right to conduct retail sales on an a la carte basis at the Center.

**E. The initial term of the Agreement will be for five years (5) years, commencing upon September 1, 2009.** At the conclusion of the five (5) year term, this Agreement shall renew for two (2) successive periods of one (1) year each, unless either party shall notify the other party in writing of its intention not to renew, such notice to be provided not less than thirty (30) days before the end of the then current term or renewal period.

## **SECTION II A Equipment and Facilities**

A. Center shall provide, at no cost to Caterer, appropriate food service facilities and basic equipment for use by Caterer in the performance of this Agreement.

B. Center shall provide, at no cost to Caterer, a private office including a desk, two chairs and a phone with one direct line. Additional line cost would be the responsibility of the Caterer. Long distance phone charges on the Caterer's phone line will be the responsibility of the Caterer, provided that such charges are billed to the Caterer each month, each bill therefor to be accompanied by a copy of the telephone company's billing evidencing and itemizing the long distance charges billed to the Caterer's phone line.

C. Each party shall, at no cost to the other, make all alterations, modifications or replacements which may be necessary to correct conditions in the premises or equipment owned by it which are in violation of any applicable building, sanitation, health or safety law. Center agrees to make, at Center's sole expense, alterations, modifications or replacements which Center may desire to make in order to procure or maintain compliance with the standards of any applicable accrediting agency. Caterer shall operate in conformance with the rules and regulations of such agencies. Caterer shall notify and gain approval from Center of any changes required as a result of this paragraph.

D. Caterer will provide its own letterhead, paper, envelopes, pens, postage, etc. for performing catering related business. Caterer will be promoted as "Civic Center Catering" by Sodexo.

E. Caterer may utilize the Center's copy machine on a limited basis at no charge. Caterer will pay Center 5 cents per copy for large copy jobs if they desire to use the on site copy machine.

F. Center will provide an internet connection for the Caterer through the City network. Caterer must abide by all policies of the City of Nampa's IS Department for usage. Access to the City system may be discontinued if Caterer can not abide by IS Department guidelines. Caterer

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will provide a computer to the City of Nampa for the Caterer's usage for the duration of the contract period. This computer will be maintained and operated as a City of Nampa computer, under its management. No phone lines/fax lines/modems can be actively attached to this computer. Caterer may operate its own computers with modems, at its own expense.

## **SECTION II B**

### **Setup, Cleanup and Facility Maintenance**

A. Caterer shall maintain a proper state of cleanliness in all areas of catering operations. All primary room set up and break down responsibilities are the Center's. Center will set up and return all tables. Center will place stacks of chairs in catered event rooms and return stacks of chairs following events. Center will place chairs around table before events and stack chairs following events. Center will perform basic vacuuming of rooms. Center is responsible for vacuuming and cleaning all catered rooms and food service areas including hallways. Caterer is responsible for table linen for all catered events. Caterer is responsible for set up and removal of table settings and food service related items. Caterer is responsible for all food and drink spills, and broken/worn out small wares. Food and drink spills are defined as everything a vacuum will not pick up. Caterer is responsible to begin clearing event rooms of catering equipment, food and trash within one hour after event is completed. Food service items must be completely removed in a timely manner from event rooms.

In the spirit of team work, Catering may be requested to assist Center in large set ups and break downs. (Example: Events 400+) Center will not be charged for any assistance given by the caterers. A spirit of team work is important in the production of all events.

Caterer will be solely responsible for maintenance and cleanliness of kitchen area and catering storage areas. Caterer will be solely responsible for food preparation, presentation, removal and disposal. Caterer will promptly dispose of all paper products and garbage following each Center event in the trash dumpster to be provided by the Center on the premises. Area around trash dumpster will be kept free of debris and area will be maintained daily. Caterer shall perform and supply program setup and serving equipment for all events including, linens, napkins, flatware, glassware, dishware, and any other serving ware needed to serve a meal. Caterer is responsible for cleaning Center's food service areas in accordance with regulations, standards, and specifications of the District Health Department, as well as the cleaning specification listed in this Agreement. Center will provide equipment and supplies outlined in "Schedule A" for Caterers usage. Caterer will be responsible for cleaning all items that are food service related such as dish ware, pans, kitchen floor, sinks, oven, etc. Caterer will be responsible for kitchen cleaning including walls, equipment, counters, storage areas, shelves, floors and hoods. Caterer is also responsible for cleaning meeting rooms following catered events such as spot cleaning food spills and basic table wiping. A \$30 per hour fee (\$30 minimum) is charged to Caterer for neglect of cleaning food spills and stains. Caterer is responsible for permanent damage to Center property due to negligent cleaning. Caterer will supply all its own cleaning supplies, towels, etc in the kitchen and for food service operations. Caterer will be responsible for day to day cleaning and sanitary maintenance of food service equipment (oven, dishwasher, etc.).

B. Center will provide all room set-ups & break downs for events including entertainment staging and audio visual services. The Center will provide pest control services for Catering areas on a routine basis. Center will provide and pay for all necessary trash facilities and pick-up services for catering operations. Center will provide all utilities required by the Caterer (excepting only long distance telephone charges), including, but not limited to, electricity, gas, water, sewer and local telephone. Center will be responsible for expenses relating to maintenance, repair and replacement of all food service equipment. Equipment does not include any small wares. Caterer will be solely responsible for repair or replacement of any Center asset, including food service equipment, that is damaged due to Caterer's negligence.

### **SECTION III**

#### **Facility & Equipment Maintenance**

A. Caterer will have exclusive use of Center kitchen and equipment outlined in "Schedule A." However, Center retains the rights to use Center Kitchen in special circumstances and is required to leave area in a clean orderly manner. Caterer is responsible to maintain the cleanliness of all food service fixtures and equipment. Caterer will not be responsible for normal "wear and tear" on major equipment. Caterer will be required to replace broken/lost/worn out glassware, dishware, flatware and all other smallware items separated on "Schedule A." Caterer must maintain original inventory at agreed upon operating levels. Caterer agrees to replace any items lost or broken within thirty days after written notification from Center. All small ware items on "Schedule A" including newly replaced pieces, are property of the Center. Caterer will be responsible for any loss or damage of Center assets, including, but not limited to food service equipment, due to Caterer's negligence. "Schedule A" will display separate sections designating small wares and equipment. Caterer and Center will jointly agree to the items listed on "Schedule A" upon commencement of agreement. All items added to "Schedule A" will be acknowledged by both Caterer and Center in writing. Center is not responsible for replacing items on "Schedule A" once identified as outdated. Caterer is responsible for replacement of small wares on "Schedule A" that are identified as worn or unusable due to normal wear and tear.

Additional purchases of food service related equipment and small wares by the Center will be made at the discretion of the Center. Caterer will have primary responsibility of additional purchase of food service equipment and small wares. Request for financial assistance from Center for food service related items (repair or purchase) for Caterer must be made in advance of financial commitment to vendor.

B. Caterer will create and perform a daily, weekly, monthly and quarterly cleaning maintenance schedule, approved by the Center, to assure proper care of the Center.

C. Caterer will have 24 hour access to the Center. Caterer is responsible for planning around the Center's event schedule to avoid disturbances to customers. Caterer will be responsible for locking and unlocking doors to the kitchen in the absence of Center staff. Caterer will be liable for any property damaged or stolen due to unlocked doors left by Caterer.

D. Caterer's operating budget is based on the utilization of permanent ware service. Center shall be responsible for maintenance of dishmachine equipment.

**SECTION IV**  
**Compensation & Financial Affairs**

Center will receive commissions of all Net Sales collected from food and beverage sales (including alcohol) from catering operations (At Civic Center or Off-Site at other locations) based upon the following scale:

| <u>Event Size</u>     | <u>Commission%</u> |
|-----------------------|--------------------|
| \$0.00 - \$500.00     | 0%                 |
| \$501.00-\$2,500.00   | 10%                |
| \$2,501.00-\$5,000.00 | 22%                |
| \$5,001.00-\$7,500.00 | 25%                |
| \$7,500 +             | 27%                |

For the purposes of this Agreement, "Net Sales" shall mean the entire revenue actually received by Caterer (Gross Sales), less state taxes, gratuities/service charge and credit card fees. No other Caterer expense may be deducted from Gross Sales to determine Net Sales. Examples (but not limited to these illustrations) of such non-allowable expenses to deduct from Gross sales are food costs, labor, license fees. Center and Caterer may jointly elect to adjust the catering percentage for special events if agreed to in writing by both parties. Caterer will be responsible for providing accurate event billing information to Center immediately following each event including bar/pour reports. Caterer is subject to a \$20 late/adjustment fee (per occurrence/event) for late financial information or adjustments that cause accounting complications for Center.

Center's compensation amount will be calculated based on Caterer event contracts that will be provided to the Center by the Caterer in a timely manner. For the purposes of this Agreement, "Gross Revenue" shall mean the entire revenue actually received by Caterer, less state and city taxes and gratuities.

Center shall receive 10% of all Net Sales received from retail sales/concessions at the Center. Caterer shall collect all Net Sales from off-premises catering and retail sales, and shall remit the commission due and an income report, on or before the thirtieth (30<sup>th</sup>) day of each month, for the prior month's income.

B. Caterer will provide income reports to Center for all concessions, off-site catering, and all other special food services no later than 7 days after event. The Center's compensation for all concessions, off-site catering and special events (use percentage schedule above) will be payable on or before the thirtieth (30<sup>th</sup>) day of each month, for the prior months income.

Caterer will provide Center with copies of initial catering contracts with event customers immediately following agreement of terms by customer. Caterer will invoice customers for Catering charges. Caterer will take use all reasonable efforts to collect customer charges,

including institution of litigation. Provided it has diligently pursued all reasonable efforts to collect payment, Caterer will not be liable for Center rebate due to delinquent payments from event customers. Caterer will pay monthly rebate for all events (paid and non-paid) to Center on or before the thirtieth (30<sup>th</sup>) day of each month, for the prior months income. Center will provide rebate reimbursement to Caterer after all reasonable efforts for collection have been exhausted.

C. Caterer will provide customers the opportunity to pay for their catering expenses on Mastercard or Visa. Caterer will provide its own merchant system, separate from Center, for this process.

D. Caterer will be responsible for payment of all expenses, taxes and gratuities directly related with catering services.

E. Additional Commissions: Sodexo will accrue an additional commission to be paid to Center in the amount of 2% of net sales. Upon the completion of each fiscal year, Sodexo will pay this commission (minus any outstanding bad debt) to Center. Sodexo shall accrue an annual fund equal to \$10,000 for each contract year (2-5) for the purpose of purchasing additional catering equipment to be used in the execution of operations. Sodexo shall make such purchases in mutual agreement with the Civic Center staff.

G. Initial Year-One Investment to Nampa Civic Center. Upon execution of this contract, Sodexo will accrue \$2,000 per month for 10 periods to total \$20,000 for the upgrades to catering/concessions that both Center and Catering agree are necessary. Payment is due at the close of Catering fiscal year if gross revenues are over \$450,000.00.

H. Caterer shall pay commissions due to Center at the appropriate settlement time; provided, however, that Caterer shall first offset any past due amounts owed by Center to Caterer including interest charges.

#### I. Billing

1. No later than five (5) working days after the end of each week, Caterer shall submit to Center an invoice for all charge sales for special functions and other account receivables during the week. Center shall pay the invoiced amount within seven (7) days after the invoice date. Center shall pay interest on any amount not paid when due at the rate of one and one-half percent (1.5%) each month from due date until paid. Upon termination of the Agreement, all outstanding amounts shall immediately become due and payable.

2. Center agrees that all third party catering events shall be administered in accordance with Caterer's policies for payment and collection: the third party will provide Caterer a guaranteed count and payment equal to seventy five percent (75%) of the total estimated amount due for the event not less than fourteen (14) days prior to the event. The remainder of the amount due shall be paid to Caterer at the time of the event. If Center requests that Caterer deviate from its policy as stated above, Center shall be liable to Caterer for any outstanding receivables related thereto. Center shall pay any such outstanding amounts within seven (7) days of receipt of an invoice therefor.

## SECTION V

### Licenses & Liability

A. Center & Caterer shall obtain necessary licenses and permits at its sole expense from the State of Idaho, Canyon County and City of Nampa to serve alcoholic beverages on Center premises. Caterer will be responsible for payment of up to Two Thousand and 00/100 (\$2,000.00) per year to the State of Idaho for the Nampa Convention Center liquor license. Ownership of this license belongs to the City of Nampa/Nampa Civic Center. Caterer agrees to lease said license from City of Nampa in separate agreement. Caterer will be responsible for all County and City permit fees. Caterer will abide by and comply with all laws, regulations, orders or directives of said department. Caterer shall have the exclusive right to sell all Alcoholic Beverages at the Center. The Center shall have the right to determine at which events Alcoholic Beverages—including distilled spirits, beer and/or wine may be sold. In addition to the above liquor license agreement, a separate liquor license lease agreement will negotiated between Center and Caterer.

Caterer will be solely responsible for limiting its service of alcoholic beverages to persons twenty-one (21) years of age or older and shall be solely liable for any damages or injury caused by it having served said beverages to persons less than twenty-one (21) years of age. Caterer shall indemnify, defend and hold harmless the Center, the City of Nampa and their officers, officials, employees and agents from any claims or lawsuits for injuries or damages arising out of or alleged to be approximately caused by service of alcoholic beverages by Caterer to any person(s) including those under the age of twenty-one (21).

B. Each party hereto (an "Indemnifying Party"), its owners, agents, and employees agree to indemnify, defend, and hold harmless the other party (an "Indemnified Party"), and all their officers, agents and employees from any and all liabilities, claims, demands, actions, losses, damages, and costs, including all costs of defense, caused by, arising out of, or in any way related to the Indemnifying Party's acts or omissions in connection with this Agreement or the Indemnifying Party's use and/or occupancy of Center facilities. The Indemnifying Party shall defend, at its own expense, the Indemnified Party, and all their officers, agents, and employees against any and all such liabilities, claims, demands, actions, losses, damages and costs. If a loss or damage to each respective party's building, equipment, improvements or other property whatsoever because of fire, explosion or any other cause normally covered in standard form fire insurance policies with extended coverage endorsements, each party shall proportionately share in the loss or damage in accordance to each party's contribution to the loss or damage thereto. Documentation from the fire authority of the local jurisdiction, signed by an authorized representative thereof, attesting to the determination of proportional responsibility shall be required to support a claim under this provision.

C. The Caterer shall comply with all federal, state, and local laws and regulations pertinent to or otherwise affecting the sale, handling, and disposal of food.

D. In the event that either party shall file suit to enforce the terms of this Agreement, the prevailing party shall be awarded reasonable attorneys' fees and costs. This Agreement shall be

deemed entered into in the State of Idaho and shall be construed under the laws of the State of Idaho.

E. All notices hereunder may be delivered or mailed. If mailed, they shall be sent by registered or certified mail to the respective addresses or to such addresses as the parties may hereafter require in writing.

Center:  
Nampa Civic Center  
311 3rd Street South  
Nampa, Idaho, 83651  
Attn: Marie Baker, Director

Caterer:  
Sodexo America, LLC  
11044 Research Blvd. #A-105  
Austin, Texas 78759  
Attn: Jim Jenkins  
Division Vice President

F. Center Director shall act as a liaison between Center and Caterer. All decisions and actions of Center Director are binding on Center.

G. Failure of either party to enforce at any time any of the provisions of this Agreement, or to require at any time performance by the other party of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions nor in any way to affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every such provision.

H. Should any part, term, or provision of this Agreement be by the courts decided to be illegal or in conflict with any law of the state, the validity of the remaining portions or provisions shall not be affected thereby.

I. Center and Caterer agree to be bound by any and all provisions, requirements, duties, and/or responsibilities as set out in this document.

## **SECTION VI**

### **Caterer Insurance Requirements**

A. Caterer shall not commence any work in connection with the Agreement until it has obtained all of the following types of insurance and such insurance has been approved by the Center Director.

B. Caterer and Center shall procure Worker's Compensation Insurance in conformance with applicable state law covering their respective employees who may be employed for any purpose connected with Center's food service operations, and shall provide proof of such coverage or system to Center. Coverage shall include employees liability with limits of not less than \$100,000 per occurrence.

C. Caterer shall obtain and keep in force during the term of this Agreement for the protection of Center and Caterer, Comprehensive General Bodily Injury and Property Damage Liability Insurance in the Combined Single Limit of Two Million Dollars (\$2,000,000.),

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including, but not limited to, overage for Personal Injury Liability, Property Damage Liability, Auto Liability, Blanket Contractual Liability and Products Liability, and covering the operations and activities of Caterer included in this Agreement, and shall deliver a certificate evidencing such policy or policies to Center prior to commencing work under this Agreement. Limits will be in amounts not less than full replacement cost for property damage and Two Million Dollars (\$2,000,000.00) for personal injuries naming the Caterer and the Center as the insured. This policy shall have no standard coverages removed by exclusion. The insurance policies shall contain a covenant by the company issuing the same that they shall not be canceled unless a thirty (30) day written notice of cancellation is given to Clients. All above insurance policies will name both Caterer and the Center as the insured.

D. Caterer shall obtain Liquor Liability for the protection of the Caterer & Center, each common cause in amounts not less than Two Million Dollars (\$2,000,000). This policy shall have no standard coverages removed by exclusion. The insurance policies shall contain a covenant by the company issuing the same that they shall not be canceled unless a thirty (30) day written notice of cancellation is given to Clients. All above insurance policies will name both Caterer and the Center as the insured.

E. Caterer shall furnish an annual certificate of insurance displaying required coverage including comprehensive liability, liquor liability and property damage specifically naming the Nampa Civic Center and City of Nampa as additionally insured.

## **SECTION VII**

### **Independent Contractor Status**

A. The Caterer shall be an independent contractor and the employees of the Caterer shall not become employees of the Center. No partnership is intended to be entered into by this agreement.

## **SECTION VIII**

### **Books and Records**

A. Caterer shall maintain books and records necessary to verify Gross Revenue under the terms of this Agreement, which books and records shall be available for inspection by Center upon reasonable notice and during regular business hours. Center may cause such books and records to be audited by an accredited accounting firm. The cost of such audit will be borne by Center, unless the audit reveals that the Gross Revenue for the period audited differed from the Gross Revenue reported by Caterer for such period by more than five percent (5%), then Caterer shall pay the cost of the audit. Caterer shall immediately pay Center the amount of any deficiency in the Catering Fee for the period covered by the audit.

B. Caterer will promptly pay all sales taxes and similar governmental charges for the goods and services it delivers to third parties under the terms of this Agreement. Caterer shall pay all bills and payroll incurred in the normal operation of this Agreement according to established terms of credit.

C. Caterer shall submit invoices for food service to customers after each event. Credit terms shall be consistent with Caterer's standard credit and collection policies.

D. Catering charges will be based on the kind of menu and level of service requested. Caterer will provide a quality catering brochure of items with prices that Customers may use as a basis for their selection.

## **SECTION IX**

### **Caterer Responsibility & Requirements**

A. Caterer shall manage and operate Center's Food Service facilities. Purchases of food and supplies required for the operation of the food service facilities shall be made by Caterer, utilizing the Caterer's regional purchasing contracts.

B. Caterer recognizes that the quality of items sold at the Center is a matter of highest concern to the Center and is of the essence of the Agreement. Caterer represents and warrants that all items it sells will be of the highest possible quality made from "scratch" whenever possible.

C. All food and its preparation must conform in all respects to all applicable federal, state, county, health district and municipal statutes, ordinances and regulations.

D. Caterer shall comply with industry standards of beer, wine, and other Alcoholic Beverages and non-alcoholic beverages regarding quality, quantity, storage, handling, and service thereof.

E. Caterer shall be available and willing to provide food service to any and all events that occur at the Center. The Caterer realizes that all events may not produce a profit. The foregoing notwithstanding, if providing food service to individual unprofitable events impedes Caterer's ability to earn a reasonable profit from operations at the Center, the parties shall negotiate in good faith arrangements to alleviate such hardship, including but not limited to modifications to the compensation payable to the Center.

F. Caterer will make sure all room set ups and food service are "ready" at specified time as listed on contracts.

G. Caterer will present food service that is decorative and will stand out as exceptional in the community.

H. Center will be allowed to operate vending machines separate from this agreement.

I. The Center Director shall have the right of approval of all containers in which food and beverages are served or sold.

J. The Caterer shall furnish and supply to the Center a primary menu that includes prices. Initial pricing shall be agreed upon by the parties. The parties shall review pricing on no less

than an annual basis. Prices shall be increased each year in an amount agreed to by the parties, it being understood that absent such agreement Caterer shall have the right to increase pricing by an amount equal to the increase in the Consumer Price Index, Food Away From Home-Northwestern United States Region, from July 31 of the prior contract year to July 31 of the current contract year. Pricing increase cannot exceed 4% in any given year. Market tolerance for price increases will be strongly considered. Low market tolerance for price increases will supersede Consumer Price Index price adjustments. Low market tolerance will be determined by comparing Center Catering prices with averaging catering prices in Canyon County. Low market tolerance will be determined in agreement by both parties.

K. Caterer will employ a full time, on site, food and beverage Catering Director who possesses the necessary experience and expertise to provide the overall management capability for a first-class catering operation. It is preferred that this individual has culinary training and has marketing/sales experience. Catering Director will serve as a liaison and Caterer representative at the Center. Caterer shall prepare and process the payroll for, and shall pay such employee directly. Catering Director shall be supported by Caterer supervisory personnel. Catering Director candidates must be reviewed and approved by Center.

L. All food service employees shall be employees of Caterer and shall be compensated directly by Caterer. Caterer shall prepare and process the payroll for and shall pay such employees directly. Caterer will maintain an I-9 on file for each employee.

M. The parties hereto shall be solely responsible for all personnel actions regarding employees on their respective payrolls. Each party represents and warrants that it shall withhold and/or pay, as appropriate, all applicable federal and state employment taxes and payroll insurance with respect to its employees (specifically including any income, social security and unemployment taxes), insurance premiums, contributions to benefit and deferred compensation plans, licensing fees and worker's compensation costs, and shall file all required documents and forms.

N. Caterer will comply with all "OSHA" and "ADA" requirements that are applicable to the Caterer's responsibilities under this Agreement, such compliance by the Caterer to not include any alteration, modification or replacement of any fixture, equipment or other property owned by the Center or the facilities within or comprising the Nampa Civic Center. Center will comply with all "OSHA" and "ADA" requirements applicable to its responsibilities under this Agreement.

O. Catering wait staff will wear standard uniform shirt, black pants, solid black shoes uniform for all catering service. Catering management and office staff will adhere to a standard professional business dress code.

P. Catering Office will be open a minimum of 4 hours per day, Monday-Friday during standard business hours.

Q. Caterer will employ competent and orderly employees who will keep themselves neat and clean, and provide courteous and competent treatment and service to all patrons.

All Catering staff will recognize that we are in a service business and treat each and every customer and employee with a respectful and gracious attitude. Caterer will enforce a zero tolerance drug policy with its staff which strictly prohibits the use of or possession of illegal drugs or alcohol on the job. Possession of alcohol for catering sales purpose is accepted.

R. Neither party shall discriminate because of race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, or status as a Vietnam veteran, or any other basis protected by applicable law, in the recruitment, selection, training, utilization, promotion, termination, or other employment related activities concerning Food Service employees. Each party affirms that it is an equal opportunity employer. The staffing, promotion, placement or assignment of managers who work on this account must be done without any preference or limitation based on race, color, religion, sex, age, national origin, disability, sexual orientation, genetic information, Vietnam Veteran status, or any other basis protected by applicable law. This obligation applies to the recruitment, selection, training, utilization, promotion, termination or other employment-related activities concerning Caterer's employees. Under no circumstances will Caterer permit a request or suggestion by a Center to place a particular manager in an account to override its non-discrimination policy.

In addition, Caterer affirms that it is an equal opportunity and affirmative action employer, is legally responsible for all of its employment decisions affecting its own employees, which include thousands of extremely talented and diverse managers, and shall comply with all applicable federal, state and local laws and regulations, including, but not limited to, Executive Order 11246; Rehabilitation Act of 1973; Vietnam Era Veterans Readjustment Assistance Act of 1974; Civil Rights Act of 1964; Equal Pay Act of 1963; Age Discrimination in Employment Act of 1967; Immigration Reform and Control Act of 1986; Public Law 95-507; the Americans With Disabilities Act; and any additions or amendments thereto.

S. Caterer will make every reasonable effort to recruit employees from the Nampa Community for its operations.

T. Caterer will make every reasonable effort to assist Center in bringing in new or returning business to the Center. Caterer will actively pursue new catered events. Catering Director will designate time each week to increasing catering event volume at the Center.

U. Caterer will provide high quality standard menus for Center customers and specialized menus for special groups such as government agencies, frequent customers and potential customers. Menus will be created in a timely manner.

V. Center shall not hire, make any agreement with, or permit the employment in any of Center's operations, any person who has been a Caterer management employee at the Concession Service within the earlier of one (1) year after said employee terminates employment with Caterer or within one (1) year after termination of this Agreement. Center acknowledges that Caterer employees have acquired special knowledge, information, skills and contacts as a result of being employed with and trained by Caterer. In the event Center does hire, make any agreement with or permit the employment of said employee into its Concession Service within the restricted period, it is acknowledged by Center that Caterer shall suffer damages and Center

shall pay Caterer a fee equal to two (2) times the annual salary of such employee. This sum was determined to be reasonable by both parties after due consideration of all relevant circumstances. This provision shall survive the termination of the Agreement.

## **SECTION X**

### **Inventory**

A. Caterer shall own the inventory of all food and food supplies. Small wares are not considered food supplies.

B. Upon the commencement of this Agreement, Caterer and Center shall jointly inventory all dishware, flatware, glassware, and similar loose items (hereinafter "smallwares") owned by Center.

## **SECTION XI**

### **Default and Termination**

A. If at any time during the term of this agreement, Caterer shall fail to commence the work in accordance with the provisions of this Agreement or fail to diligently provide services in an efficient timely and careful manner and in strict accordance with the provisions of this Agreement, or fail to use an adequate number or quality of personnel or equipment to complete the work or fail to perform any of its obligations under this Agreement, then Center shall have the right, if Caterer shall not cure any such default after thirty (30) days written notice thereof, to terminate this Agreement and complete the work in any manner it deems desirable, including engaging the services of other parties. All outstanding payments due to Center from Caterer shall become immediately due and payable. Except for monetary defaults, the Caterer shall be allowed additional time to cure a matter in default provided that within the cure period specified (30 days), the Caterer has commenced and is reasonably and diligently pursuing all actions required to cure the matter in default.

B. If at any time during the term of this Agreement, Center shall fail to perform any of its obligations under this Agreement, then Caterer shall have the right, if Center shall not cure any such default after thirty (30) days written notice thereof, to terminate this Agreement. All outstanding payments due to Caterer from Center shall become immediately due and payable. Except for monetary defaults, the Center shall be allowed additional time to cure a matter in default provided that within the cure period specified (30 days), the Center has commenced and is reasonably and diligently pursuing all actions required to cure the matter in default

C. Notwithstanding any other provision of this Agreement to the contrary, either party may terminate this Agreement without cause at any time during its terms, by giving ninety (90) days notice in writing to the other party of its intention to terminate this Agreement and setting forth a specific termination date.

D. The rights of termination referred to in this Agreement are not intended to be exclusive and are in addition to any other rights available to either party at law or in equity.

## SECTION XII

### Trade Secrets- Proprietary Rights-Confidentiality

A. Caterer acknowledges that during the term of this Agreement, Caterer may have access to or become acquainted with various trade secrets and confidential proprietary information of Center including, but not limited to customer files, studies, management guidelines and procedures, operating manuals and similar compilations and documents regularly used in the operation of the business of Center. Caterer shall not use or disclose any such trade or proprietary secrets, directly or indirectly, during or subsequent to the term of this Agreement. Caterer further agrees not to photocopy or otherwise duplicate any such material without the prior written consent of Center. All records, documents, compilations, manuals and similar items (including all copies of facsimiles thereof) shall remain the exclusive property of Center and shall be returned to Center immediately upon any termination of this Agreement.

B. During the term of the Agreement, Caterer may grant to Center a nonexclusive right to access certain proprietary materials of Caterer, including menus, signage, Concession Service survey forms, software (both owned by and licensed to Caterer), and similar items regularly used in Caterer's business operations ("Proprietary Materials"). In addition, Center may have access to certain non-public information of Caterer, including, but not limited to, recipes, management guidelines and procedures, operating manuals, personnel information, purchasing and distribution practices, pricing and bidding information, financial information, surveys and studies, and similar compilations regularly used in Caterer's business operations ("Trade Secrets"). Trade Secrets shall not include (i) any information which at the time of disclosure or discovery or thereafter is generally available to and known by the public or the relevant industry (other than as a result of a disclosure directly or indirectly by Center), or (ii) any information which was available to Center on a non-confidential basis from a source other than Caterer, provided that such source was not bound by an agreement prohibiting the transmission of such information, or (iii) any information independently developed or previously known without reference to any information provided by Caterer.

Center shall not disseminate any Proprietary Materials or disclose any of Caterer's Trade Secrets, directly or indirectly, during or after the term of the Agreement. Center shall not photocopy or otherwise duplicate any such material without the prior written consent of Caterer. All Proprietary Materials and Trade Secrets shall remain the exclusive property of Caterer and shall be returned to Caterer immediately upon termination of the Agreement. Without limiting the foregoing, Center specifically agrees that all software associated with the operation of the Concession, including without limitation, menu systems, food production systems, accounting systems, and other software, are owned by or licensed to Caterer and not Center. Furthermore, Center's access or use of such software shall not create any right, title interest, or copyright in such software, and Center shall not retain such software beyond the termination of the Agreement. Any signage, servicemark or trademark proprietary to Caterer shall remain the exclusive property of Caterer and shall be returned to Caterer immediately upon termination of this Agreement. In the event of any breach of this provision, Caterer shall be entitled to equitable relief, including an injunction or specific performance, in addition to all other remedies otherwise available. This provision shall survive termination of the Agreement

### **SECTION XIII**

#### **Amendments, Waiver; Construction and Effect, Catastrophe**

A. Each of the Articles and Appendixes shall remain in effect throughout the term of this Agreement unless the parties agree, in a written document signed by both parties and attached to this Agreement, to amend, add or delete an Article or Appendix. Any amendment to this Agreement shall become effective the time specified in the amendment.

B. No waiver of any default hereunder shall be construed to be or shall constitute a waiver of any subsequent default.

C. This Agreement supersedes all prior negotiations, representations or agreements, if any. The Appendices referred to herein are made a part of this agreement by the respective references to them.

D. With the exception of payment obligations for prior performance under this Agreement, neither Caterer nor Center shall be liable for the failure to perform their respective obligations under this Agreement when such failure is caused by fire, explosion, water, act of God or inevitable accident, civic disorder or disturbances, strikes, vandalism, war, riot, sabotage, weather and energy related closings, governmental rules and regulations or like causes beyond the control of such party, not for real or personal property destroyed or damaged due to such causes.

### **SECTION XIV**

#### **Financial**

A. To provide a ready reference to the financial obligations of Caterer and Center, the following listings of financial responsibility are made a part of this Agreement.

B. The following shall be deemed as direct operating expenses of Caterer: 1) Sales Tax, 2) Food Costs, 3) Hourly staff wages, 4) Food Service Director salary and bonus, 5) Payroll taxes including worker's compensation insurance, 6) Employee benefits, 7) Paper products, 8) Kitchen smallwares replacement, 9) Janitorial and cleaning products, 10) laundry and linens, 11) Uniforms, 12) Training and education, 13) Decorations, 14) China, silverware and glassware replacement, 15) Comprehensive Liability insurance, Liquor Law Liability Insurance, Personal Property Insurance, 16) Office supplies, printing and postage costs, 17) Employment advertising, 18) Rentals (if applicable) 19) Catering marketing/advertising expense, 20) Center Compensation Percentage

C. The following shall be furnished by Center without charge to Caterer: 1) Utilities, 2) Trash disposal from loading dock container, 3) local telephone, 4) Office, 5) Food service facilities and equipment.

D. The following shall be furnished by Caterer without charge to Center: 1) Salaries and travel expenses for Caterer support staff, 2) General home office expense including general

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accounting, accounts payable, internal auditing, recipe development, personnel training, payroll administration and tax processing, 3) District Manager supervision and assistance.

## **SECTION XV**

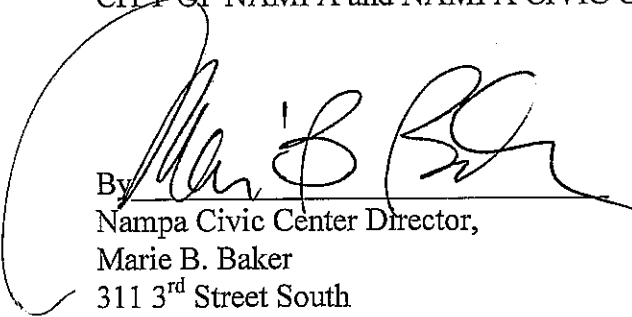
### **Complete Agreement**

A. This Agreement contains all the covenants, understandings, agreements, and stipulations between the parties, and the parties declare their intention to be legally bound by the agreement. This Agreement may not be assigned by either party in whole or in part without the consent in writing of the other party, except Caterer may, without prior approval and without being released from any of its responsibilities, assign this Agreement to any wholly-owned subsidiary of Caterer.

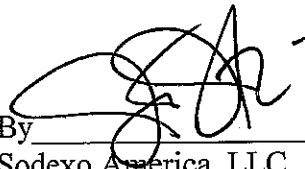
IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written

APPROVED AND AGREED UPON:

CITY OF NAMPA and NAMPA CIVIC CENTER



By \_\_\_\_\_  
Nampa Civic Center Director,  
Marie B. Baker  
311 3<sup>rd</sup> Street South  
Nampa, ID 83651



By \_\_\_\_\_  
Sodexo America, LLC  
Jim Jenkins  
Division Vice President  
11044 Research Blve. #A-105  
Austin, Texas 78759