

THE STATE OF TEXAS

§

§

**COPPELL ARTS CENTER
CONCESSIONAIRE AGREEMENT**

§

COUNTY OF DALLAS

§

This Agreement (“Agreement”) is made by and between the City of Coppell, Texas (the “City”), and Mackbeth Corporation, a Texas corporation (“Concessionaire”) (each a “Party” and collectively the “Parties”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the City owns and operates the Coppell Arts Center located at 505 Travis St., Coppell, Texas (the “Center”) and intends to have various events therein; and

WHEREAS, the City desires to have an independent contractor provide food and beverage service at the Center during various events; and

WHEREAS, Concessionaire desires to provide food and beverage services through concession operations for theatre events held at the Center (“Concession Services”); and

WHEREAS, Concessionaire desires to provide food and beverage services through catering operations at the Center’s event spaces for various third parties and the Center for special events, including but not limited to, weddings, corporate meetings and events, galas, fundraisers, dining events, and receptions (“Catering Services”); and

WHEREAS, Concessionaire desires to provide Concession Services and Catering Services at the Center as an independent contractor;

NOW THEREFORE, in consideration of the foregoing, and on the terms and conditions hereinafter set forth, and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**Article I
Concession and Catering Services**

1.1 The City grants Concessionaire an exclusive privilege, subject to the exceptions set out in Section 1.2 herein, to offer Concession Services and Catering Services at the Center to sell food and beverages during various events in accordance with the terms of this Agreement.

1.2 Contrary to the exclusive rights granted in Section 1.1, upon written agreement by the Parties, Concessionaire may waive their exclusive right for agreed upon Catering Services. In

addition, contrary to the exclusive rights granted in Section 1.1, the following entities are exempt from exclusively utilizing the Concessionaire for Catering Services:

- (a) City of Coppell;
- (b) Designated resident companies of the Center;
- (c) Coppell Arts, Cultural, and Heritage Foundation; and
- (d) Coppell Chamber of Commerce.

Article II Term

The Initial Term of this Agreement shall commence on the last date of execution by each Party and will terminate on September 31, 2024. (the “Initial Term”). Concessionaire shall have the option to extend the term of this Agreement for one (1) additional two (2) year term (the “Renewal Term”) by providing written notice thirty (60) days prior to the expiration of the Initial Term.

Article III Commission Fees

3.1 Concession Commission.

- (a) Concessionaire shall pay City a commission fee equal of twenty percent (20%) of Gross Profit for “Concession Services” (as defined herein). “Gross Profit” shall mean Total Revenue (“Total Revenue” shall mean all amounts paid or payable to Concessionaire for Concession Services) less Total Expenses (“Total Expenses” shall mean labor costs and cost of goods sold incurred by Concessionaire for the provision of any Concession Services), excluding sales tax. Concessionaire shall be responsible for tax liability on Concession Services. The concession fee shall be paid to the City no later than the tenth (10th) of each month for the prior month’s Concession Services.
- (b) Concession Break-Even. If Gross Profit for the provision of any Concession Services does not exceed zero and 00/100 dollars (\$0.00), Concessionaire shall not be subject to Section 3.1(a) herein; and, City shall pay Concessionaire the difference between Maximum Total Expenses and Total Revenue. “Maximum Total Expenses” shall mean an agreed upon limit of Total Expenses, which are eligible for application of this Section 3.1(b), expected to be incurred by Concessionaire for the provision of Concession Services at any one event. For each event at the Center for which Concession Services are required, the Parties shall mutually agree and establish, in writing, the Maximum Total Expenses.

3.2 Catering Commission. Concessionaire shall pay City a commission fee equal to ten percent (10%) of Gross Revenue for “Catering Services” (as defined herein). “Gross Revenue” shall mean all amounts paid or payable to Concessionaire for Catering Services including, but not

limited to, sales of food and beverages and equipment rentals, for a specific Catering Services event, excluding sales tax. Concessionaire shall be responsible for tax liability on Catering Services. The concession fee shall be paid to the City no later than the seventh (7th) day after the Catering Services are provided.

3.3 Concessionaire shall keep an accurate and true record of all merchandise, collections and sales, and shall permit the City to examine such records for the purpose of verifying the correctness of any reports made to the City by Concessionaire. Concessionaire shall provide to the City all records evidencing Gross Profit for Concessions Services and Gross Revenue for Catering Services immediately after the provision of such service. The City shall verify all inventory amounts at the commencement and end of all events.

3.4 Any false reporting of Gross Profit or Gross Revenue, or withholding of receipts, will result in Concessionaire forfeiting its right to any commission fees and Concessionaire may not be allowed to participate in any future events.

3.5 The City shall not be liable to Concessionaire for any expenses paid or incurred by Concessionaire for any reason not provided herein, unless otherwise agreed in writing by the Parties.

3.6 Concessionaire must maintain a point of sale ("POS") system, which accepts credit or debit card payments, for Concessions Services and Catering Services. The POS system shall operate in a manner that is consistent with the Center's financial controls and loss prevention policy. The City shall not be responsible for lost or stolen money.

Article IV Concessionaire's Obligations and Operations

4.1 Concession Services.

- (a) All Concession Services provided by Concessionaire at the Center shall be conducted from a City licensed concession space. The Managing Director of the Center ("Director") shall locate and determine the area in the Center to be used by Concessionaire for Concession Services ("Concession Area").
- (b) Concessionaire shall submit a product list setting forth food and beverage items, together with a price sheet, to the Director for approval prior to the execution of this Agreement. Any change to the product list or cost sheet shall require written approval from the Director.
- (c) Concessionaire shall be responsible for purchasing and providing, at Concessionaire's sole cost, the necessary and sufficient food and beverages including, but not limited to all brands of cold drinks, candy, chips and other commodities to be sold and served by Concessionaire as part of the Concession Services at the Center.

- (d) Concessionaire shall, at all reasonable times, keep for sale and supply the public with hot and cold drinks and other beverages and food products for which there is or shall be a reasonable demand.
- (e) All City, State, County or other governmental regulations, licenses, or permits relating to public health, and shall be strictly observed by Concessionaire.
- (f) Concessionaire shall not be permitted to make any sale with any element of chance.

4.2 Catering Services.

- (a) Concessionaire may be engaged by either the Center or a third party (hereinafter "Client(s)"), having a private event at the Center, to provide Catering Services. Any such event is to be a catered event only and, as such, is not open to the general public or to casual customers and that the price per person or total price and time for each event shall be predetermined and agreed to between the Concessionaire and the Client(s). All other functions not meeting these criteria shall be considered Concession Services and administered as such and in accordance with this Agreement.
- (b) Concessionaire shall submit a price sheet for its basic menus for Catering Services to the Director for approval prior to the execution of this Agreement. Any change to the cost sheet shall require written approval from the Director.
- (c) All Catering Services provided by Concessionaire at the Center shall be conducted from a City licensed event space. Concessionaire shall coordinate with the Director and Client(s) to locate and determine the appropriate area in the Center to be used by Concessionaire for Catering Services ("Catering Area").
- (d) Concessionaire shall provide the highest quality of food and beverages to the Client(s) in connection with Catering Services.
- (e) Concessionaire shall furnish and provide, in sufficient quantity, dishes, silverware, glassware, linens, and other utensils and equipment used in conjunction with the Catering Services.

4.3 Sales Tax. Concessionaire is solely responsible for paying all applicable Texas State Sales Tax. Concessionaire shall pay all applicable Texas State Sales Tax for Concession Services or Catering Services. Concessionaire shall pay all taxes of every nature and description arising out of or in any manner connected with the sale of its products.

4.4 Expenses. Concessionaire shall be responsible for all of Concessionaire's direct expenses, including but not limited to, labor, vehicles, food, beverages, napkins, cups, straws,

supplies, permits, licenses, legal fees, professional accounting fees, administrative fines, cash registers, equipment, and supplies.

4.5 Alcoholic Beverages. Concessionaire shall comply with all applicable policies, ordinances, laws and regulations concerning the sale of alcoholic beverages and ensure that if in effect alcohol sales are engaged in the future, those employees who are engaged in the sale of alcoholic beverages are trained and satisfy the requirements of the Texas Alcoholic Beverage Commission ("TABC"); and Concessionaire shall obtain and maintain applicable licenses or permits from TABC and shall comply with all rules and regulations to comply with the service, storage, and delivery of alcoholic beverages.

4.6 Cleanliness. Concessionaire's operations at the Center shall be conducted in a clean, orderly, and legitimate manner in accordance with existing City policies, ordinances and any laws. No rubbish, glass, bottles, or cans of any kind shall be placed on the ground in or around the Center; all such items are to be placed in trash receptacles and removed to appropriate refuse receptacles or removed by Concessionaire.

4.7 Condition of Concession Areas. Concessionaire shall accept the Concession Area, Catering Area, and Kitchen Facilities on the date and in the condition the City makes such available. City disclaims all representations and warranties, expressed or implied as to the condition of the Concession Area, Catering Area, and Kitchen Facilities. Concessionaire shall not use the Concession Area, Catering Area, or Kitchen Facilities for any purpose other than the services described herein. Concessionaire does not have the right to lease or sublease any Concession Area, Catering Area, or Kitchen Facilities.

4.8 Supervision. City shall have the right to supervise the privileges hereby granted and the conduct of Concessionaire. Repeated complaints or misconduct by Concessionaire or its employees may be grounds for termination of this Agreement under Title VII herein.

4.9 Alterations. It is specifically understood that any changes or alterations, including painting, within a Concession Area, Catering Area, or Kitchen Facilities is forbidden without prior written approval from the City.

4.10 Waste Disposal. Concessionaire shall not dispose of any wastewater on or around any trees or shrubbery located on the Center. Disposal of such water must be through sanitary sewers or in such manners as not to injure any growing plants or grass and as to not be unsightly.

4.11 Parking. Concessionaire understands and agrees that no vehicle may be parked on the Center grounds other than in designated areas. Personal vehicles may be used to make deliveries to the Concession Area and/or Catering Area but must be parked in designated areas immediately after loading or unloading.

4.12 Signage. All signage within the Center shall be in compliance with all applicable City ordinances and approved by the Director. No out-of-door or outdoor signage is permitted.

4.13 Personnel and Employment Requirements.

- (a) Concessionaire shall assign at least one (1) designated representative who has the authority to act for and on behalf of the Concessionaire. Concessionaire shall provide the names, addresses and phone number of the designated representatives and such designated representative shall be available either on site or via phone during all hours of each event held at the Center.
- (b) Concessionaire shall provide at least one (1) staff member to be present and ready to provide the Concession Services or Catering Services herein subject to additional requirements or personnel needs communicated between the Parties for Catering Services or Concession Services.
- (c) The Concessionaire shall provide employees engaged in handling food, and employees shall wear when on duty, distinctive uniforms in color and design approved by the City and said uniforms shall be maintained and laundered as necessary. No person shall be allowed to sell or offer for sale products of the Concessionaire unless he or she is wearing such distinctive apparel. The cost of uniforms, maintenance and laundering shall be borne by the Concessionaire.
- (d) Concessionaire shall not discriminate against any employee or applicant for employment, and in providing the public service specified in this Agreement, because of race, creed, color, or national origin. Concessionaire shall, in all solicitations or advertisements for employees placed by or on behalf of the Concessionaire, state that all qualified applicants will receive consideration for employment without regard to race, creed, color or national origin.
- (e) Concessionaire shall pay all federal withholding and any other appropriate taxes or charges to its employees.
- (f) Concessionaire shall not employ individuals under sixteen (16) years of age. Any individual under eighteen (18) years of age working at the Center shall be under the direct supervision of person over the age of eighteen (18).
- (g) All employees shall conduct themselves in a manner acceptable to the City; complaints against any employee shall be directed to the Concessionaire. Repeated complaints involving an employee may result in the termination of this Agreement.
- (h) Concessionaire shall conduct Criminal background checks on each of its employees or volunteers as set forth in Exhibit "A", attached hereto and incorporated herein by reference.

4.14 Loss and Damage. The City shall not be liable for loss resulting from damage to Concessionaire's property and/or theft of Concessionaire's property or money.

Article V Center's Obligations

5.1 Center shall provide Concessionaire a sixteen by twelve-foot (16'x12') kitchen, which includes the following equipment, refrigeration units, portable warmers, microwaves, commercial icemaker, and commercial coffee and tea brewers, and a ten by eight-foot (10'x8') storage area (collectively the "Kitchen Facilities") at the Center for use for Concession Services and Catering Services.

5.2 Center shall provide solid waste, wastewater disposal, HVAC, and electrical services to the Center, including the Concession Area, Catering Area, or Kitchen Facilities. Center shall not be liable for interruption of electricity, water, wastewater, or any other utility service beyond its control.

5.3 Center shall provide Concessionaire with available tables and chairs to be used for Catering Services. Center shall not be obligated to provide tables and chairs to Concessionaire beyond what is available within Center's inventory.

5.4 Center shall provide for final cleanup, irrespective of Concessionaire's responsibility to return the premises in an orderly and substantially clean condition, after the Concessionaire has removed their equipment from the Catering Area or Concession Area.

5.5 Center shall maintain sales, promotions, and marketing of the Center and maintain a current calendar of events to be shared with the Concessionaire.

Article VI Limitations and Exclusions

All services provided for herein shall take place at the Center.

Article VII Termination

This Agreement shall terminate:

- (a) by mutual agreement of the Parties;
- (b) by either Party by providing the other Party with thirty (60) days prior written notice;
- (c) by City if Concessionaire is in breach of any of the provisions of this Agreement;
or
- (d) upon expiration of the term of this Agreement.

Article VIII

Devotion of Time; Personnel; and Equipment

8.1 Concessionaire shall devote such time as reasonably necessary for the satisfactory performance of the work under this Agreement. Should City require additional services not included under this Agreement, Concessionaire shall make reasonable efforts to provide such additional services at mutually agreed upon cost, and within the time schedule prescribed by City, and without decreasing the effectiveness of the performance of services required under this Agreement.

8.2 To the extent reasonably necessary for Concessionaire to perform the services under this Agreement, Concessionaire shall be authorized to engage the services of any agents, assistants, persons, or corporations that Concessionaire may deem proper to aid or assist in the performance of the services under this Agreement. The cost of such personnel and assistance shall be borne exclusively by Concessionaire.

8.3 Concessionaire shall furnish the vehicles, maintenance for vehicles, facilities, equipment, telephones, facsimile machines, software, email facilities, and personnel necessary to perform the services required under this Agreement unless otherwise provided herein.

Article IX

Relationship of Parties

It is understood and agreed by and between the Parties that in satisfying the conditions of this Agreement, Concessionaire is acting independently, and that the City assumes no responsibility or liabilities to any third party in connection with these actions. All services to be performed by Concessionaire pursuant to this Agreement shall be in the capacity of an independent contractor, and not as an agent or employee of the City. Concessionaire shall supervise the performance of its services and shall be entitled to control the manner and means by which its services are to be performed, subject to the terms of this Agreement. As such, the City shall not: train Concessionaire, require Concessionaire to complete regular oral or written reports, require Concessionaire devote its full-time services to the City, or dictate Concessionaire's sequence of work or location at which Concessionaire performs its work.

Article X

Suspension of Work

The City shall have the right to immediately suspend work by Concessionaire if the City determines in its sole discretion that Concessionaire has, or will fail to perform, in accordance with this Agreement. In such event, any payments due Company shall be suspended until Concessionaire has taken satisfactory corrective action.

Article XI Insurance

11.1 Concessionaire shall provide and maintain for the duration of this Agreement, and for the benefit of the City (naming the City and its officers, agents and employees as additional insureds), insurance coverage as set forth below. Concessionaire shall provide signed Certificates of Insurance verifying that Concessionaire has obtained the required insurance coverage for the City prior to the Effective Date of this Agreement.

- (a) Statutory Worker's Compensation Insurance at the statutory limits covering all of Concessionaire's employees involved in the provision of services under this Agreement with policy limits of not less than \$500,000/\$500,000/\$500,000.
- (b) Employer's Liability Insurance with coverage for bodily injury of (i) by accident, \$100,000 per accident; and (ii) by disease, \$100,000 per employee, with a per policy aggregate of \$500,000.
- (c) Commercial General Liability Insurance with coverage for combined bodily injury (including death) and property damage of \$1,000,000 per occurrence with an annual aggregate of \$2,000,000. This insurance must include coverage for premises-operations, personal and advertising injury, products/completed operations, independent contractors, contractual liability, property in the care, custody and control of the insured, personal injury, and fire legal liability (with coverage of \$250,000 per occurrence). If this insurance is written on a claims-made basis, then coverage must be continuous (by renewal or extended reporting period endorsement) for not less than twenty-four months following the occurrence of any applicable event, with "prior acts" coverage and a retroactive date on or prior to the Effective Date of this Agreement.
- (d) Comprehensive Business Automobile Liability Insurance with coverage for combined bodily injury (including death) and property damage of \$1,000,000 per occurrence. This insurance must include coverage for owned, non-owned, leased, and hired vehicles and for loading and unloading hazards.
- (e) Umbrella/Excess Liability Insurance following the form of the primary liability insurances described above and providing coverage for combined bodily injury (including death) and property damage of \$1,000,000 per occurrence with an annual aggregate of \$1,000,000.
- (f) Liquor Liability with a minimum of \$2,000,000 per occurrence and \$4,000,000 in the aggregate.
- (g) Comprehensive Property Insurance providing "all risk" full replacement value coverage for all its personal property located in the Center.

11.2 All insurance companies providing the required insurance shall either be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service, or approved by the City Risk Manager.

Article XII Availability of Funds

If monies are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, this Agreement shall be canceled and Concessionaire may only be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of services delivered under this Agreement or which are otherwise not recoverable. The cost of cancellation may be paid from any appropriations for such purposes.

Article XIII Indemnification

13.1 General. To the fullest extent permitted by law, CONCESSIONAIRE hereby indemnifies and holds harmless the City, its officers, directors, employees, agents and representatives (collectively the “City Indemnitees”) from and against ANY AND all damages, losses, cost and expenses, including but not limited to attorneys’ fees and costs, incurred by City and/or City Indemnitees to the extent they are:

- a. due to the violation of any ordinance, regulation, statute, or other legal requirement by CONCESSIONAIRE or any of its consultants, contractors, sub-contractors, or any of their agents and employees, as to the performance of the Agreement;
- b. the result of any negligent act or omission or any intentional act or omission in violation of CONCESSIONAIRE’s standard of care, by the CONCESSIONAIRE, its consultants, contractors, sub-contractors or anyone directly or indirectly employed by the CONCESSIONAIRE or anyone for whose acts the CONCESSIONAIRE may be liable; or
- c. otherwise arising out of or resulting from negligent performance of the services under this Agreement or the breach by the CONCESSIONAIRE of the Agreement, including such claims, damages, losses or expenses are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of property, including loss of use resulting therefrom.

13.2 Indemnification for Employee Injury Claims. Without limiting the foregoing, and to the fullest extent permitted by law, CONCESSIONAIRE hereby indemnifies and holds harmless City and City Indemnitees from and against all damages, losses, costs, and expenses, including but not limited to, reasonable attorneys’ fees, incurred by City and/or City Indemnitees in connection with ANY action against City and/or City Indemnitees for personal injury of any employee of the CONCESSIONAIRE or any of CONCESSIONAIRE’s consultants, contractors, sub-contractors, or anyone directly or indirectly employed by them, brought by such injured employee or the employee’s workers compensation insurance carrier (hereinafter referred to as an “Employee Injury Claim”).

With regard to claims against any Party seeking indemnity under this Section which are made by an employee of the Concessionaire, a consultant, a contractor or a sub-contractor or anyone directly or indirectly employed by the Concessionaire or anyone for whose acts the Concessionaire may be liable, the indemnification obligation assumed under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Concessionaire or any other employer under worker's compensation acts, disability benefit acts or other similar employee benefit acts.

13.3 It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligations under indemnification by Concessionaire or the additional insured requirements under the insurance section of this Agreement, such legal limitations are made a part of the contractual obligations and shall operate to amend the obligations to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the obligations shall continue in full force and effect. Should any provision or any part of any provision of this Agreement be held invalid, unenforceable or contrary to public policy, law, statute or ordinance, then the remainder of the provision, paragraph, section and/or this Agreement shall not be affected thereby and shall remain valid and fully enforceable.

13.4 The obligations contained in this indemnification by Concessionaire shall survive the expiration, completion, abandonment and/or termination of the Agreement and final completion of the Work and any other services to be provided pursuant to this Agreement.

Article XIV Miscellaneous

14.1 Interruptions; Cancellation. City shall not be liable for interruption of electricity or any utility service and City shall not be liable in damages or otherwise for a cancellation of an event for any reason. Concessionaire acknowledges that the City may, in its sole discretion, cancel an event for any reason without prior notice to Concessionaire.

14.2 Inspection. The City reserves the right to inspect the Concession Area, Catering Area, or Kitchen Facilities and the Concessionaire's operations at any time during the term of this Agreement. The right of inspection reserved to the City hereunder shall impose no obligation upon the City to make such inspections or to ascertain the condition of the Concession Area and shall impose no liability upon the City for failure to make such inspections.

14.3 Entire Agreement. This Agreement constitutes the sole and only agreement between the Parties and supersedes any prior understandings written or oral agreements between the Parties with respect to this subject matter.

14.4 Assignment. Concessionaire may not assign this Agreement in whole or in part without the prior written consent of the City. In the event of an assignment by Concessionaire to which the City has consented, the assignee shall agree in writing with the City to personally assume, perform, and be bound by all the covenants, and obligations contained in this Agreement.

14.5 Successors and Assigns. Subject to the provisions regarding assignment, this Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors and assigns.

14.6 Governing Law. The laws of the State of Texas shall govern this Agreement; and venue for any action concerning this Agreement shall be in Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said Court.

14.7 Amendments. This Agreement may be amended by the mutual written agreement of the Parties.

14.8 Severability. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions, and the Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in it.

14.9 Notice. Any notice required or permitted to be delivered hereunder may be sent by first class mail, overnight courier or by confirmed telefax or facsimile to the address specified below, or to such other party or address as either party may designate in writing, and shall be deemed received three (3) days after delivery set forth herein:

If Intended for City, to:

Mike Land, City Manager
City of Coppell
225 Parkway Blvd.
Coppell, Texas 75019

With Copy to:

Robert E. Hager
Nichols, Jackson, Dillard, Hager & Smith, L.L.P.
1800 Ross Tower
500 North Akard
Dallas, Texas 75201

If Intended for Concessionaire, to:

Attn: Todd Kerr
Mackbeth Corporation
4050 Belt Line Rd.
Addison, TX 75001

14.10 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of any number of copies hereof each signed by less than all, but together signed by all of the Parties hereto.

14.11 Exhibits. The exhibits attached hereto are incorporated herein and made a part hereof for all purposes.

11.12 No Property Interest. This Agreement does not convey or provide for transfer any ownership interest or other right to the Facility.

14.13 Audits and Records. Concessionaire agrees that during the term hereof, the City and its representatives may, during normal business hours and as often as deemed necessary, inspect, audit, examine and reproduce any and all of Concessionaire's records relating to the services provided pursuant to this Agreement for a period of one year following the date of completion of services as determined by City or date of termination if sooner.

14.14 Conflicts of Interests. Concessionaire represents that no official or employee of City has any direct or indirect pecuniary interest in this Agreement.

14.15 Compliance with Federal, State & Local Laws. Concessionaire shall comply in performance of services under the terms of this Agreement with all applicable laws, ordinances and regulations, judicial decrees or administrative orders, ordinances, and codes of federal, state and local governments, including all applicable federal clauses.

14.16 Force Majeure. No Party will be liable for any default or delay in the performance of its obligations under this Agreement if and to the extent such default or delay is caused, directly or indirectly, by fire, flood, earthquake, elements of nature or acts of God, riots, civil disorders, acts of terrorism or any similar cause beyond the reasonable control of such party, provided that the non-performing party is without fault in causing such default or delay. The non-performing Party agrees to use commercially reasonable efforts to recommence performance as soon as possible.

14.17 Employment of Undocumented Workers. During the term of this Agreement the Concessionaire agrees not to knowingly employ any undocumented workers and, if convicted of a violation under 8 U.S.C. Section 1324a (f), this Agreement may be terminated under Title VII herein. Concessionaire is not liable for a violation of this section in relation to any workers employed by a subsidiary, affiliate, or franchisee of the Company or by a person with whom the Company contracts.

14.18 Prohibition of Boycott Israel. Concessionaire verifies that it does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended. This section does not apply if the Concessionaire is a sole proprietor, a non-profit entity or a governmental entity; and only applies if: (i) the Concessionaire has ten (10) or more fulltime employees and (ii) this Agreement has a value of \$100,000.00 or more to be paid under the terms of this Agreement.

(Signature page to follow)

EXECUTED on the _____ day of _____, 2021.

CITY OF COPPELL, TEXAS

By: _____
Mike Land, City Manager

ATTEST:

By: _____
Ashley Owens, City Secretary

EXECUTED on the _____ day of _____, 2021.

MACKBETH CORPORATION.

By: _____
Todd Kerr, Managing Member

EXHIBIT “A”
CITY BACKGROUND SECURITY CHECK REQUIREMENTS

1. Concessionaire, at its sole expense, shall obtain a certified Criminal Background Report for each employee who will work at the Facility. The report may be obtained by contacting one of the governmental entities listed below. (Concessionaire should anticipate a two-week delay for State reports and a four- to six-week delay for Federal reports):

- (a) Texas Department of Public Safety. For any person currently residing in the State of Texas and having a valid Texas driver's license or photo ID card.
- (b) The appropriate governmental agency from either the U.S. state or foreign nation in which the person resides and holds either a valid U.S. state-issued or foreign national driver's license or photo ID card.
- (c) Federal Agency. A current Federal security clearance obtained from and certified by a Federal agency may be substituted.
- (d) Concessionaire shall provide the City with these reports no later than two (2) weeks before the Initial Term of the Concessionaire Agreement.

2. Concessionaire shall provide the City with a Criminal Background Report affirming that Concessionaire has conducted the required background security screening of each employee who is anticipated to work at the Facility. A listing of Concessionaire's employees must be attached to this report. Concessionaire shall not be required to provide actual background results with such reports.

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

4. Concessionaire shall provide the City with a Criminal Background Report affirming that Concessionaire has conducted the required security screening of Concessionaire's employees to determine those individuals appropriate for the Concession Services work and for presence on the City's property ("Facility"), provided that Concessionaire shall not be required to provide actual background results with such reports for Concessionaire's employees. A list of Concessionaire's employees who will have access to the Facility shall be attached to this report.

5. Concessionaire shall be required to obtain a Criminal Background Request on any new employee that is expected to work at the Facility in accordance with Paragraphs 1 – 3. Concessionaire shall provide the City with the Criminal Background Report no later than two weeks before the employee is anticipated to begin work at the Facility.